

CITY CLERK'S OFFICE  
CITY COUNCIL REFERRAL SLIP

TO: Planning Board

DATE: March 12, 2019

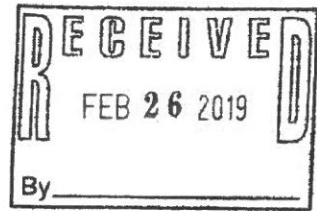
The attached document was received for City Council consideration.

The following action is required:

- ☒ Prepare a report together with related documents, if applicable, such as an ordinance, a resolution or an agreement and submit to the City Clerk's Office for inclusion in the City Council's \_\_\_\_\_ agenda.
- ☒ You are the only department or committee this communication was referred to.
- ☐ Along with your department, this item was referred to the following departments:

\_\_\_\_\_  
\_\_\_\_\_

Please feel free to contact the City Clerk's Office if you have any questions.



February 26, 2019

VIA HAND-DELIVERY

City of Concord City Council  
41 Green Street  
Concord, NH 03301

**Re: Clattenburg Rezoning, Tax Map 471Z-22**

Dear Honorable Mayor Bouley and Members of City Council:

I write on behalf of Jeff and Nicole Kipphut to request rezoning of the property at 15 Frost Road, Tax Map 471Z-22, owned by Marion Clattenburg as trustee,<sup>1</sup> from the Single-Family Residential District (RS) to the Medium Density Residential District (RM). The Kipphuts make this request under City of Concord Zoning Ordinance 22-10-2(b) "Proposed Amendments to the Zoning Map". Please see attached authorization from Mrs. Clattenburg permitting the Kipphuts to make this request.

Summary of Request

The Kipphuts request rezoning of a single 14.43-acre property (the "Property") to the Medium Density Residential District (RM) from the Single-Family Residential District (RS). See attached Map, dated Feb. 25, 2019, from City of Concord Interactive GIS Viewer. The condition and use of the Property are much more consistent with the purposes of RM and other properties in RM (primarily wooded, with one single-family house, some open fields, and a small dormant tree farm) than the purposes and other properties in RS. The purpose and intent of the requested zoning amendment is to bring the zoning of the Property in line with its condition and use. The proposed amendment will have little to no effect on any of the surrounding zones, as it will merely bring the property's zone designation into line with the current development pattern of its immediate surroundings. Because of that, the proposed amendment will have little effect on the City's economy, a positive effect on the environment, and little to no effect on municipal services or municipal facilities.

Description of the Area

The Kipphuts request rezoning of a single 14.43-acre property located at the southeast corner of Curtisville Road and Frost Road with an existing house at 15 Frost Road.<sup>2</sup> It is currently located in the Single-Family Residential District (RS). The Property is bordered to the south by a high-density residential neighborhood in the RS

<sup>1</sup> The title to the Property is held by the Roger A. and Marion A. Clattenburg Revocable Trust – 2004 with Mr. and Mrs. Clattenburg as trustees. Mr. Clattenburg unfortunately passed away in 2018.

<sup>2</sup> The subject parcel has a conditional Minor Subdivision approval creating two lots, one 1.80-acre lot to be located on Curtisville Road and one 12.63-acre lot on Curtisville Road and Frost Road. This approval has several conditions, including receipt of a variance to not hook up to municipal water and sewer or a plan showing such a hook up will be constructed.

zone, characterized by single-family homes on approximately  $\frac{1}{4}$  acre lots.<sup>3</sup> The Property cannot be directly accessed by the streets in that neighborhood as Frost Road does not currently physically connect to Dominique Drive.<sup>4</sup> To the north, west, and east of the property, the surrounding lots are large, mostly wooded, and with little to no development located in the Medium Density Residential District (RM) and the Open Space Residential District (RO). See attached Map.

The Property is primarily zoned RS with a small sliver of land on the northeast zoned RO, but borders RM to the northwest and RO to the northeast. Other properties surrounding the Property in RM and RO are single-family residential, relatively large lots, with significant woodlands and minimal development. The Mill Brook School sits on a nearby thirty-five-acre parcel in RM.

Like the surrounding properties in RM and RO, the Property is currently primarily wooded, with one single-family house, some open fields, and a small dormant tree farm. See Subdivision Plan, dated Mar. 15, 2018 (tree farm not depicted). It is located on a heavily-wooded, quiet road that transitions from pavement to dirt near the farther property boundary. Since 1917, the Property has remained in a single family who prioritizes the historical and rural values the Property has to the family. Over the years, the land has had a sulky-horse racetrack for hobby horse racing, a small Christmas tree farm, and a network of trails used by the family, friends, neighbors, and pets. The majority of the land is in current use and will remain in that status after the conditionally-approved subdivision is completed. The intention is that the land will be well-maintained and remain mostly wooded with a revitalized trail system and Christmas tree farm.

#### Statement of Purpose and Intent

The purpose and intent of the requested zoning amendment is to bring the zoning of the Property in line with its condition and use. The Property is much more suited to be in the RM zone than the RS zone, given its size, use density, and location.

Under the City of Concord Zoning Ordinance, the Medium Density Residential (RM) District is established:

to accommodate single-family detached dwellings, single-family detached dwellings with one accessory dwelling unit (ADU), two-family dwellings, cluster developments, and planned unit developments at densities of between one and five (5) dwelling units per acre, and housing for the elderly at densities not exceeding fourteen (14) dwelling units per acre, in areas within the Urban Growth Boundary where municipal utilities are present or

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<sup>3</sup> From the City of Concord Interactive GIS Viewer, it appears that most lots in this neighborhood range from 0.15 to 0.35 acres.

<sup>4</sup> A connection appears on the Subdivision Plan and on City maps, but the roads do not physically connect and are currently blocked by woods.



anticipated, with the lowest density corresponding to the absence of utilities and the greater densities corresponding to full municipal utility service.

City of Concord Zoning Ordinance § 28-2-2(b)(2). The minimum lot size in RM without sewer is 40,000 square feet total area with a minimum frontage of 200 feet. City of Concord Zoning Ordinance § 28-4-1(h).

By contrast the Single-Family Residential (RS) District is established:

to encompass those areas of the City that have been substantially developed under prior provisions of the Zoning Ordinance as standard or cluster subdivisions of single-family detached dwellings at densities of one and one-half (1 ½) to four and one-half (4 ½) dwelling units per acre, and to accommodate single-family detached dwellings and cluster developments at densities not exceeding three and one-half (3 ½) dwelling units per acre, and housing for the elderly at densities not exceeding six (6) dwelling units per acre, in areas with full municipal utility services.

City of Concord Zoning Ordinance § 28-2-2(b)(3) (emphasis added). The minimum lot size in RS is 12,500 square feet total area with minimum frontage of 100 feet. City of Concord Zoning Ordinance § 28-4-1(h).

The Property has not been substantially developed and is not located in an area with full municipal utility services. As such, it does not fit with the stated purpose of the RS zone to “encompass those areas of the City that have been substantially developed” under previous iterations of the Zoning Ordinance. It is currently significantly larger than the minimum lot size and has longer frontage than is required by either zone, but more closely conforms with the RM zone requirements. It is significantly more similar to the surrounding properties located in the RM and RO zones than to the neighbors to the south in the RS zone. See attached Map. Approving this zoning amendment would allow the conditions of the Property to more closely conform with the character of the district in which it is located.

Further, (as footnoted above) the City of Concord conditionally approved a minor subdivision to divide the Property into a 1.80-acre lot and the remaining 12.63 acre lot. See attached Subdivision Plan. Marion Clattenburg is Nicole Kipphut’s grandmother and the Kipphuts are seeking to build a single-family residence on the smaller subdivided parcel of the family property. Due to the layout and existing features of the Property, the logical location of the new lot would require approximately 2000 feet of new sewer line for a new home to hook into existing City sewer.<sup>5</sup> This is so cost-prohibitive that no contractor will provide a firm bid for the project.

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<sup>5</sup> This approximation is based on the location of the nearest fire hydrant to the proposed location of the house on the approved, subdivided lot. The actual distance may be different from this number.

In the current RS zone, hookup to City sewer is required. In general, this is logical for the zone because the minimum lot size and frontage requirements anticipate very small lots that cannot support septic systems. However, for the Kipphuts, the requirement prevents them from utilizing their approved minor subdivision to build a house on a 1.80-acre lot, which would be only the second house on the large 14.5-acre parent lot. The RM zone allows for properties to either be on municipal sewer and water services or to have a septic system, and requires larger lots for areas without sewer service. This requirement is directly related to the size of the lot and the environmental impact of having septic systems on small lots. Here, there is no issue of having enough space, as the approved lot is 1.80 acres (78,527 square feet), far greater than the 40,000 square feet required for a lot in RM without municipal sewer.

In addition, the amendment to RM from RS would allow use of the Property as it has been used in the past but is currently not zoned to be used. This includes, but is not limited to, the revitalization of a small tree farm located near the corner of Frost Road and Curtisville Road. Having a small, family-run, non-invasive and non-obtrusive agricultural operation in the local area would be an asset to the surrounding homes and neighborhoods. At this time, the Kipphuts are not applying for approval of any particular uses on the Property. Instead, the tree farm is an example of the potential beneficial uses that could be available on the Property in RM that are not available in RS without a variance or special exception.

#### Evaluation of the Effect of the Proposed Amendment

The proposed amendment will have little to no effect on any of the surrounding zones, as it will merely bring the Property's zone designation into line with the current development pattern of its immediate surroundings.

First, the proposed amendment will not affect the existing neighborhoods in RS. As stated, Frost Road does not connect to Dominique Drive, the closest street in the existing neighborhood in RS. There will be no change in traffic pattern, use, or any other effect on RS. In addition, the Property currently cannot be reached directly from the neighborhood in RS, so changing to RM does not inappropriately limit further contiguous development of that neighborhood. There will be no effect to traffic, school population, emergency services, or other effect on the affected districts and existing adjacent neighbors. In fact, the opposite is likely true; changing from RS to RM will limit future dense development on this parcel that would strain municipal roads, schools, and services.

Second, changing from RS to RM will not affect the rest of RM. Bringing the Property into the RM zone makes it much more likely that the Property will continue to be similar to the surrounding residential properties on large lots, instead of being developed in the future in a manner inconsistent with surrounding properties and the development pattern on Curtisville Road, South Curtisville Road, and Frost Road. This is



also evidenced by the City of Concord Neighborhood Map for Assessing, which groups the Property with other RM and RO properties, and not with the RS properties nearby. From this, it can be inferred that the City of Concord Assessors consider the property to be more like RM and RO properties to its north and east for valuation purposes than the RS properties primarily to the south.

Third, changing from RS to RM does not change the Urban Growth Boundary. Both RS and RM are considered within the Urban Growth Boundary. City of Concord Zoning Ordinance § 28-2-2(b)(2), (3); see also City of Concord Master Plan 2030, III – 4-7. Therefore, changing this Property from RS to RM will not change the Urban Growth Boundary and the stated objectives of the boundary from the Master Plan. In this way, the proposed amendment is consistent with the City of Concord Master Plan 2030.

It should be noted that changing this Property from RS to RM does not create any nonconformities.

#### Statement of the Effect of the Proposed Amendment on City of Concord

The proposed amendment will have little effect on the City's economy, a positive effect on the environment, and little to no effect on municipal services or municipal facilities. Changing the Property from RS to RM will allow the Kipphuts to make use of their conditionally-approved minor subdivision without any need to extend municipal sewer services into an area that has more than sufficient space for a residential septic system. The primary effect will be to allow a young couple full of potential to take root in the City.

Further, the proposed amendment reduces the number of lots that could be hypothetically created from the Property in the future. While not guaranteed, this would likely lead to a reduction in the density of land use on the Property, and an associated reduction in density of new population and residential construction. This would likely reduce future impact on municipal services and facilities, including emergency response, sewer and water, and local schools, and benefit the environment by preserving more open land and reducing the population loading on the Property. Moving the Property to RM will allow for controlled growth and development in line with the surrounding properties and allow for the associated planned and controlled growth in the need for municipal services.

#### Contact Information

Requesting Citizens:

Jeff and Nicole Kipphut

78 S. Curtisville Road

Concord, NH 03301

603-568-8368 (Jeff Kipphut)

603-724-9416 (Nicole Kipphut)



Property Owner:  
Marion Clattenburg  
15 Frost Road  
Concord, NH 03301  
(603) 724-5742

Representative of the Kippahuts:  
Kelsey C. R. Peterson, Esq.  
BCM Environmental and Land Law  
3 Maple St  
Concord, NH 03301  
603-225-2585

We understand that your process involves referring this request to the Planning Board for its recommendation and following that you will decide the request. The Kippahuts respectfully request that you approve the requested zoning amendment. Please contact me if you have any questions.

Sincerely,

Kelsey C. R. Peterson, Esq.

Enclosures  
cc: Clients

February 9, 2019

To Whom It May Concern:

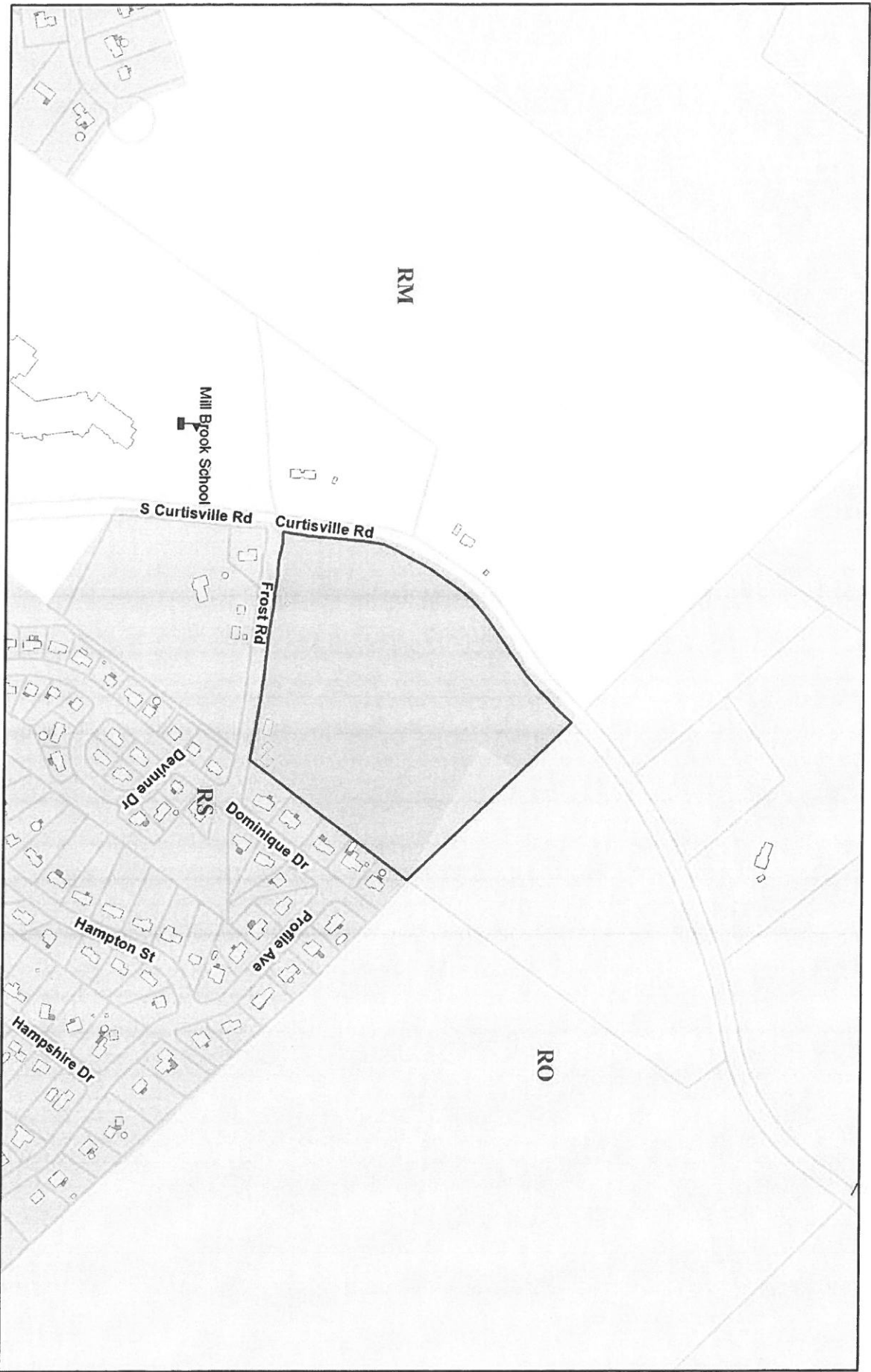
I, Marion Clattenburg, give Jeffrey and Nicole Kipphut permission to rezone the property at 15 Frost Road, Concord, NH 03301.

Sincerely,

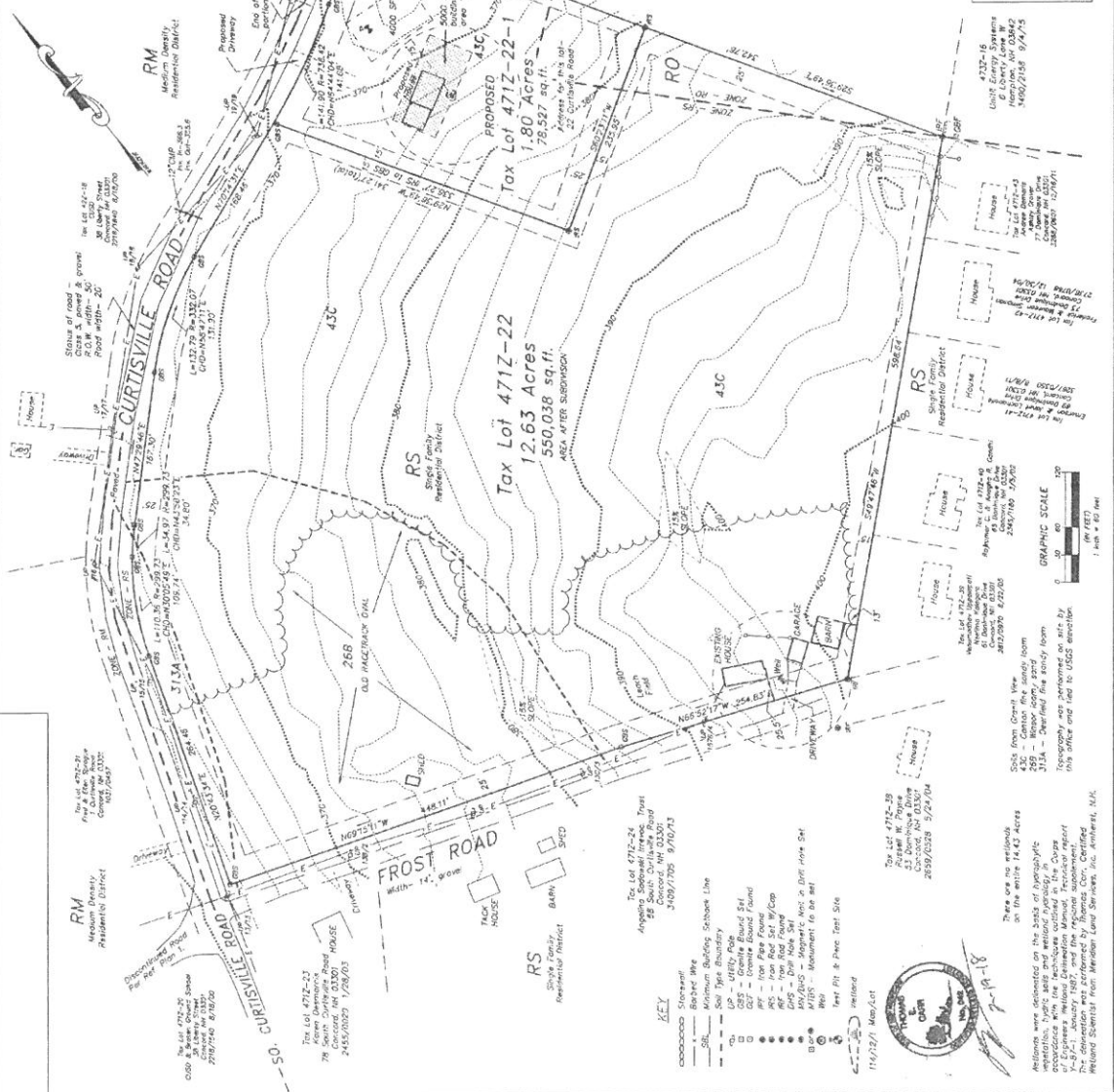
A handwritten signature in cursive script, appearing to read "Marion A. Clattenburg".

Marion A. Clattenburg





February 25, 2019



**REFERENCE PLANS:**

1. "Subdivision and Consolidation Plan of Tax Map 118, Block 1, Lots 3 & 7, Tax Map 118 G, Blocks 1, Lots 4 & 5, and Tax Map 114 I, Block 1, Lot 10, Concord, NH, prepared for: City of Concord School District and City of Concord, NH, completed, dated June 3, 1959, revised through 6/6/79, prepared by The Engineering and Surveying, Inc., retained at plan #1850.

2. "Subdivision Plan entitled 'Corrigan Hill Estate, Concord, NH,' dated 6/16/78 recorded through 6/24/79, by Holden Engineering & Surveying, Inc. and amended in M.C.R. at plan #154-55.

1) Owners of record: Tax Lot 4712-22  
Roger A. & Marion A. Callenberg Recreable Trust - 2004  
Roger A. & Marion A. Callenberg, Trustees  
15 Frost Road  
Concord, NY 03301  
3048/023 8/25/09

2) Zorn AS -  
Area of Tax Lot 4712-22 before subdivision - 14.43 Acres (628,560 SF)  
Tax Lot 4712-22 is in Current Use Assessment.

[illegible]

NO. 80399, 21026

	Impervious (existing)	Impervious (proposed)	Zero sq ft. (0%)
2) 2,625 sq ft. (0.0048%)			3,550 sq ft. (0.071%)
3) No increase.			
4) Tax lot 4712-22 is not in a Flood Hazard Zone. See Flood Insurance Rate Map 3301C003302, Effective Date: April 19, 2010.			
5) This will be the only new record at the Merrimack County Registry of Deeds and also filed at the City of Concord Planning Division.			
6) State Subdivision Approval for Tax Lot 4712-22-1 is #SA2010652102.			

**SUBDIVISION PLAN**  
Tax Lot 4712-22  
for  
Roger & Marion Clattenbura

13 North Road  
Concord, NH Merrimack County

EDM & Theodolite Survey  
Control Traverse 1/10,200+

Scale: 1"=60' March 15, 2018  
Notebook #220 Job #2289

ARTHUR F. SICILIANO JR.  
Land Surveyor  
Sewage Disposal System Designer  
52A HALL AVENUE, HENNIKER NH 03242  
603-529-2857 / 603-529-2857

REVISED: 5/7/78 - Revised plans on per City Review, dated 5/7/78

[illegible]

4732-16  
Unit's Energy Systems  
6 Liberty Lane W  
Morris Plains, NJ 03642

277 Dumbarton Drive  
Concord, NH 03301  
2386/06-27 12/16/91

[illegible]

1400  
# (FEET)

120  
100  
80  
60  
40  
20  
0

0 20 40 60 80 100 120

SPECIMEN SIZE

1011th  
03367  
724/04

House

House

Ten Lot 4712-35  
Wendover Lagoon  
Nevada Wildlife  
65 Dorland Drive  
Convent, NE 03301  
2012/0970 4/22/05

Soils from Gravit View

Topography was performed on site by this office and tied to USGS elevation.

There are no willows on the entire 14.43

8-14-62

NO. 100

U. S. DEPT. OF AGRICULTURE

33 100  
Carcass  
2859/0520

resolutions were demonstrated on the basis of hydrophytic vegetation, hydric soils and wetland hydrology in accordance with the techniques outlined in the Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1, January 1987, and the regional supplement. The delineation was performed by Thomas Corr, Certified Wetland Scientist from Meridian Land Services, Inc. An