

RE: Motion for Rehearing the 1/26/11 Decision to Rezone Arch St.

Dear City Council Members:

As aggrieved owners of the 12+ acres of vacant land behind Arch Street (portions or the entirety of tax lots 11-11, 11-11-1, 11-14 & 11.14B-1 as identified in the rezoning amendment), we request you rehear the Council's decision to rezone our land as afforded under RSA 677:2.

Our motion is based on the language of the Rezoning Amendment (Attachment A) under Purpose: the intent of the zoning change is to "ensure that existing dimensional characteristics of lots on Arch Street are preserved" constitutes an overly restrictive regulatory "taking" of our land for any future development of this land without "due process" nor "just compensation" as afforded under our US and NH Constitutional rights. This represents a reduction of our property's utility and value to such an extent that it is no longer capable of any economically viable use. The extent to which this rezoning interferes with our reasonable investment backed expectations is excessive and unfair inverse condemnation.

Specifically, the plain meaning language of the Rezoning Amendment has infringed on our rights to convey pre-existing RM-U zoned developable land by freezing our dimensional lot characteristics into a nonconforming and undividable 12 acres.

The Supreme Court of N.H. defined inverse condemnation accordingly (citations omitted), "Inverse condemnation occurs when a governmental body takes property in fact but does not formally exercise the power of eminent domain. Inverse condemnation may be effected through either physical act or regulation. We look to the individual circumstances of each case to determine whether there is an unconstitutional taking. To determine whether an inverse condemnation has occurred, we consider whether "arbitrary or unreasonable restrictions which substantially deprive the owner of the economically viable use of his [property] in order to benefit the public in some way constitute a taking within the meaning of our New Hampshire Constitution. Limitations on use create a taking if they are so restrictive as to be economically impracticable, resulting in a substantial reduction in the value of the property and preventing the private owner from enjoying worthwhile rights or benefits in the property."

The Rezoning of our land is inverse condemnation because it substantially interferes with our investment-backed expectations for a reasonable return on our costly investment in these parcels over many years. The extent to which this rezoning has interfered with "distinct investment-backed expectations" is particularly significant because as a nonconforming undividable 12 acre lot the land has no use where under previous RM-U zoning there are the following facts: When asked at the Nov. 2010 Planning Board discussion of the development potential of our land, the City Planning Director warned the Planning Board that our land, though no plan was before him, may end up with 192 dwelling units if not rezoned to R12. However, per the City Planner's published Notice of Decision of the Planning Board, he stated the development potential of our land versus the 30 dwelling units which currently exist on Arch St., "could generate double that amount" so 60 units. Per the City Planner's testimony before the Council on Jan. 26, 2011, he stated "If the Amendment passes, we suspect that you may see approx. 20 single family houses. If it doesn't pass, you'll probably see twice that."

So in 3 months, we've heard development of our land is a threat of 192 units, to 60 units, to 20 units to a rezoning to a nonconforming lot ensuring the existing dimensional characteristics of lots on Arch St. are preserved. We had realtors appraise our land in 2010 and one realtor appraised the land at \$1,500,000.00 under RM-U zoning for conveyance. Under this rezoning a lot which preserves the existing dimensional lot characteristics is valued at one tenth of that for conveyance.

Thus, this is an uncompensated taking through an overly restrictive rezoning inverse condemnation because we have sustained a substantial reduction in the value of the property from 12 acres of RM-U to a nonconforming lot "ensuring the existing dimensional characteristics are preserved".

Additionally, we allege this is also an illegal "spot rezoning" of our land. Spot rezoning occurs when a zoning amendment is invalid because it not in accordance with a comprehensive plan. It is singling out of a parcel of land for a use different than the surrounding land creating an island of zoning different from abutters. Spot rezoning is confiscatory and so illegal. The courts have stated they are keenly looking for examples where ex-mayors and city administrators are protecting the back-yards of each other to the detriment of other land owners. We have that here.

Our property has seven abutters. One is the ex-Hotel/ex-Culinary Dormitory of 100+ units, a 3 unit at 8 Arch, a 5+ unit at 10 Arch and a 3 unit at 46 Arch thus our land is surrounded by multi-units but under R12, our land is not allowed to have multi-units and non-conveyable as multi-units developable. This creates an island of zoning different than existing neighbors, has confiscated the rights we enjoyed under RM-U and hope to convey and so is illegal spot rezoning.

Spot rezoning occurs when a zoning amendment is invalid because it not in accordance with a comprehensive plan. Though there was a comprehensive Zoning plan review passed by the Council on Oct. 27, 2010 according to the city website Ordinance folder, this plan contains no recommendation nor notice to the public for a need to change the approx. 57 acres of RM-U zoned land in the city, which has the foreseeable result of hundreds of dwelling units, to a lower density R12 zone. However, two months later in his Dec. 2010 analysis to rezone Arch St., the City Planner recommends that the undeveloped land on Arch Street be rezoned from RM-U to lower density R12, a near 30% reduction in available land for multi-family dwelling development in the city. This is not fair to our interests and is using zoning powers as discrimination under RSA 672:1, sec. III-e because it takes away low and moderate housing for multi-family unit developable land without notice or accommodation without increasing multi-family developable land elsewhere in the city.

In the Planner's Dec. Analysis under Findings he states the public interest "to lessen congestion in the streets" as justification for rezoning Arch St. However, the 1992 City Planning Dept. formal recommendation for a new Gateway Blvd. passing through our land to revitalize the downtown and take traffic off of streets like Arch, and the current Master Plan asking the Council and Planning Bd. to "identify and seek to maximize opportunities to develop or preserve transportation corridors" was been ignored by this council. We have documented a willingness to assist the City in this endeavor by offering to trade to the city an easement to this Blvd. and possibly a donation of a lot to the City along this easement which were both rebuffed in 2010. We relied on the City to act in the best interests of all the citizens per the Master Plan and the 1992 Planning recommendation so as to not take our rights for political reasons. Also, doesn't an existing land owner on a street have a reasonable expectation of funneling residential traffic onto the street to which they have owned property for many years?

In the City Planner's Dec. Analysis, he states that due to the public interest "to promote health and the general welfare" through rezoning Arch St. thus "encouraging the streets aesthetic quality of life." that Arch St. be rezoned to R12. This is overly restrictive and over-reaching because our land has merely 80+ feet along Arch and doesn't open up for development for over 300' off of Arch so new housing on our land would not be visible from Arch St.

In the City Planner's Dec. 2010 Analysis, he states that due to the public interest of preventing "over-crowding" and "avoid undue concentration of population", he recommends lowering density to R12, thus, harming our interests to convey RM-U multi-family developable land as we have always owned it and been taxed as "residential developable land". Again not a consideration in the 2010 Zoning Plan approved two months earlier.

Why did the City Planner and Planning Board act in this way? We submit that the only reasonable explanation is the one afforded us by ex-mayor, abutter and petitioner W. Boc, in 2009 when he stated to both of us that he had "convinced Chris Parker that they were best buddies" and that he had "most of the Planning Board over for Dinner".

We allege this is also "illegal" spot rezoning through the wrongful acts of petitioners, abutting ex-mayors, the Dover Housing Authority and by the concerted acts of City Administration officials.

Specifically, though the Planning Board's Jan. 2011 recommendation was FOR the language of the Petitioner's Proposed Amendment, "as approves the petitioner's request to zone the area as described" per the minutes of the Dec. 21, 2010 meeting, the phrase "ensure that the existing dimensional characteristics of lots on Arch Street are preserved" was **NOT stated** and not "described" in the Petitioner's Proposed Amendment (Attachment B) despite the assertions of some petitioners before you in the January Council Public Hearing. The addition of this language by the City Administration is egregious and makes the City liable for the additional harm having added this language to the Amendment has on our interests.

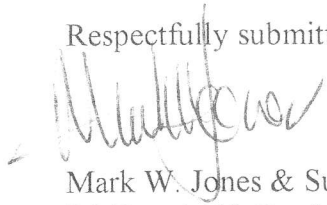

As one example of Petitioners wrongful acts, (Attachment C), the Dover Housing Executive Director under color of title, used taxpayer property, on tax-payer net services and taxpayer time unduly influenced city Planning to act fast on rezoning our land around his personal property to our detriment. There are other wrongful acts.

We also charge unfair treatment by the Planning Board. During review of a different proposed rezoning Amendment in Jan. 2011 before the Board, a similar citizen's petition to rezone from existing business zone to residential zoning of approx. 9.5 acres on Freschett Rd. was tabled in order for the Economic Development Director to conduct an evaluation of the economic impact of the proposed rezoning. We were not afforded such important consideration. Had there been such a study conducted, our economic impact would have been a very significant issue before the Board. The rezoning Amendment affecting our land was rushed through without this consideration and so we have been treated unfairly. A court of equity will want to know why.

We request this rehearing because we contend, but for the Petitioner's, Planning Board's and City Council's unreasonable act of rezoning, our rights to the 'use and enjoyment' of our land would not be infringed. I have attended and testified at every Planning Board and Council meeting on this topic and my concerns and offers to compromise have been ignored. Please let us know if you will accept this motion to rehear and take this opportunity to arrive at an equitable resolution to this matter.


Respectfully submitted,

Respectfully submitted,

Mark W. Jones & Suzanne M. Jones,
PO Box 1480, Rockport, Tx, 78381

Attachment A

 CITY OF DOVER	CITY OF DOVER— ORDINANCE	
	Ordinance Number: O – 2011.01.12 - 3 Ordinance Title: Rezoning Arch Street Chapter: 170	Agenda Item#: 13.C.3.

The City of Dover Ordains:

1. PURPOSE

The purpose of this ordinance is to amend Chapter 170 of the Code of the City of Dover, entitled Zoning, adjusting the existing boundary between the R-12 and RM-U districts to promote the existing character and ensure that existing dimensional characteristics of lots on Arch Street are preserved.

2. AMENDMENT

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising the official Zoning Map of the City of Dover, referred to in Section 170-8 of said Chapter as follows:

“The official Zoning Map of the City of Dover, New Hampshire, dated December 9, 2009, is amended by changing from Urban Density Multi-residential (RM-U) to Medium Density Residential (R-12) an area of approximately 30 acres along Arch Street consisting of the following parcels or portions of parcels: 10-152, 10-153, 10-154, 10-155, 10-156, 10-157, 10-161-1, 10-162, 10-163, 10-164, 11-9, 11-10, 11-11, 11-11-1, 11-13, 11-14, 11-14-B, 11-14-B-1, 11-15, 11-16, 11-17*.

*= The rezoning only affects the portion of the lot currently zoned RM-U. The remaining portion is R-12.

AND

Chapter 170 of the Code of the City of Dover, entitled Zoning, is hereby amended by revising the official Zoning Map of the City of Dover, referred to in Section 170-8 of said Chapter as follows:

“The official Zoning Map of the City of Dover, New Hampshire, dated December 9, 2009, is amended by changing from Urban Density Multi-residential (RM-U) to Thoroughfare Business (B-3) an area of approximately 3 acres along the Spaulding Turn pike consisting of a portion of parcel: 11-2. Said portion is west of lots 11-11-1 and 11-14

3. TAKES EFFECT

This ordinance shall take effect upon passage and publication of notice as required by RSA 47:18.

Requires a 2/3 vote of the City Council members present and voting to approve the Planning Board’s recommendation for the Arch Street rezoning.

AUTHORIZATION

Approved as to Funding: Daniel R. Lynch
Finance Director

Sponsored by: Dean Trefethen, Deputy Mayor
Planning Board Representative

Approved as to Legal Form: Allan B. Krans, Sr.
General Legal Counsel

Recorded by: Karen Lavertu
City Clerk

Document Created by: Planning Department
Document Posted on:

o-2011.1.12_arch_st12_21_10
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Attachment B.

We, the residents of the Arch Street area, support amending Chapter 170 of the Code of the City of Dover to change the zoning on Arch Street from Urban Density Multi-residential (RM-U) to Medium Density Residential (R-12) in an effort to promote the existing character of our neighborhood.

NAME	ADDRESS (Dover, NH)	DATE SIGN
George G. Sherwood	43 Arch St Dover NH	9-22-10
Jane Ann Sherwood	43 Arch St Dover NH	9-22-10
Walter S. Dinsell	41 Arch St. Dover, NH	9/22/10
John F. Oussell	41 Arch St. Dover, NH	9/22/10
Doreen Leighton	39 Arch St. Dover NH	9/22/10
Nancy M. Terry	37 Arch St. Dover, NH	9-22-10
Samuel R. B. B. B.	70 ARCH ST, DOVER NH	9-23-10
Jack Buckley	36 Arch St Dover NH	9-24-10
Sharon Buckley	36 Arch St Dover NH	9-24-10
Laurence J. Tate	2 Arch St Dover, NH	9-25-10
Patricia J. Tate	2 Arch Street Dover, NH	9-25-10
Doug DeSantis	145 Silver St Dover, NH	9-25-10
Karen O'Hara	145 Silver St. Dover NH	9-25-10
Carl B.	8 ARCH ST.	9-25-10
Carol B.	8 Arch St.	9-26-10
Joe Hill	10 Arch St	9-26-10
Robert Bryant	7 Arch St Dover NH	9-26-10
Nancy A. Bryant	7 Arch St.	9-26-10
James G. Bryant	7 Arch St.	9-26-10

Parker, Christopher G.

Attachment C.

From: Jack Buckley [jack@doverhousingauthority.org]
Sent: Friday, October 01, 2010 9:28 AM
To: Bill Garrison; bobcarroll4@comcast.net; Carol Boc (cboc@winsorbrook.com); Cathy Vanderweil (cvande4056@yahoo.com); Chris Wyskiel (cwyskiel@wbtblaw.com); earlegoodwin@hotmail.com; George and Jane Ann Sherwood (gsher@myfairpoint.net); Jaclyn Brand; Janet Perry (Janet@Nicoles-Hallmark.com); Patty and Peter Driscoll (rceppdriscoll@comcast.net); Sam Reid; Wil Boc (wboc@wbtblaw.com)
Subject: Arch Street rezoning update

Chris Wyskiel has agreed to draft up a statement that Cathy Vanderwell will read at the Oct. 12th Planning Board mtg. Jane Ann Sherwood has indicated that there has been a lot of activity at the Moscato property this past week. Good thing we are moving fast on this. Jack

Jack Buckley
 Dover Housing Authority
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 Dover, NH 03820-2994
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 Fx: 603.742.6911
 TTY: Relay NH 800.735.2964
 E-mail: jack@doverhousingauthority.org
