

John & Kristen Marois
303 Curtis Farm Road
Wilton, NH 03086

June 9, 2020

Dear Mr. Paul Branscombe, Town Administrator & and Wilton ZBA,

RE: Recent appeal of impact fee to ZBA and basis of denial. (Case #5/12/20-1)

On May 12, 2020, The ZBA voted 3-2 against the appeal and stated the Town's counsel has said that impact fees are assessed through the schedule of impact fees in appendix VIII that was approved in 2014 at Town Meeting. ZBA also determined they don't have the authority to waive a properly assessed fee. The building permit was issued on October 21, 2019. The impact fee was assessed on March 12, 2020, nearly 5 months later.

The language of the town ordinance 25.5.2 mirrors the state statute 674:21.V.d and clearly states "impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit" (emphasis added)

Hillsborough-southern judicial district No. 2009-158 states "When examining the language of a statute, we ascribe the plain and ordinary meaning to the words used" and goes on to say "While [RSA 674:21] authorizes municipalities to impose impact fees, it comprehensively regulates the municipality's implementation of such fees." Simonsen, 145 N.H. at 386. "For example, the statute regulates the amount and uses of such fees, see RSA 674:21, V(a), specifies procedures for assessing and collecting such fees, see RSA 674:21, V(d)," . The statute is clear in it's meaning and intent.

The Supreme Court of New Hampshire, Hillsborough-southern judicial district No. 2001-702 had already ruled on this issue back in 2002. "The statute does not define the word "assessed" and we need not define it now. Rather, it is sufficient to state both that a preliminary estimate of an impact fee by a municipality does not constitute an assessment within the meaning of the statute, and that a municipality does not assess fees implicitly by merely receiving an application wherein fees are represented. While the town acknowledges that it had preliminarily calculated the amount of the impact fees that were to be charged to the Riverwalk project, they were never finally determined due, in part, to the planning board's rejection of the Riverwalk site plan. Therefore, the trial court's finding that the town had assessed an impact fee within the meaning of RSA 674:21, V(h) was in error."

The Town Of Wilton's stance on the "assessment of the impact fee via the adoption of a table of fees" is not in line with the statute's meaning and intent. Perhaps it is just a misinterpretation of the statute.

Our stance is clear, as are the decisions on previous court cases regarding this issue. One role of the ZBA is meant to decrease the amount of court cases by resolving issues at a local level.

Sincerely,

John & Kristen Marois