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Darrin R. Brown, Esq., N.H. Bar # 16827

Date: June 9, 2020

[via: email]

Michelle Decoteau, for
Zoning Board of Appeals
Town of Wilton
42 Main Street, P.O. Box 83
Wilton, N.H. 03086

Re: 834 Mason Road: Note in response to undated "Timeline" document which was first accessible today

Dear Board,

I would like to thank Chairman Faiman for his assistance in overcoming a "404 Error Document not found" issue via a telephone call at 10:39 AM this morning.

Having viewed the undated "Timeline", I noticed at least a few assertions by Mrs. Ditre that the applicants' attorney "had made a 91-A request & failed to come to the Town office to view the documents." That is not a true statement. Counsel for the Krol Trust followed RSA 91-A requirements to a tee. It was Town of Wilton personnel who failed to follow through and deliver.

My detailed RSA 91-A Request dated December 10, 2019 included the following instruction, designed to minimize the cost and maximize the efficiency of fulfilling the request:

"If you need additional time to acquire any portion of the documentary record requested above, please fulfill the portion of the document request that you can within five (5) business days and provide an estimate of the time needed to fulfill the remainder of the document request with your partial production. See RSA 91-A:4.

Please email these records to me directly at darrin@drblawoffice.com as .pdf, .jpg, .bmp, .docx, etc., documents attached to email. This production method will minimize costs and maximize efficiency for both our offices.

For any over-size documents such as maps, plans, or bound materials not transmissible as email attachments, please schedule a date/time with my office for in-person inspection, photographic reproduction, and review. If any costs are to exceed \$20.00 for actual reproduction costs, I will tender payment for an itemized invoice reflecting the breakdown of the copying or reproduction costs."

According to the Timeline, on a singular occasion, to wit, January 7, 2020, Mr. Branscombe - purportedly on behalf of a Ms. Ditri out on medical leave - emailed undersigned counsel *“to assist you in finalizing and meeting your 91 A request.... We would now like to establish a date for you to come into our Town Office to review the records we have put together.”*

The only reason I am aware of the text of Mr. Branscombe’s attempt to contact me on behalf of Ms. Ditri is because at approximately 11:21 AM today, I called him about that entry in the “Timeline” and he was able to forward me a copy. I thought it odd that during the phone call Mr. Branscombe inquired if maybe his email was in “spam” folder.

As background, I do not delete emails – I archive them. Multiple search criteria, including on (a) his name; (b) on the name of Ms. Decoteau who was cc’ed in that email; and, (c) on as broad a search term as “Wilton” did not yield a result for that 1/7/2020 email anywhere in my email system, inclusive of “spam” and “deleted items” folders.

At approximately 12:01 PM today, Ms. Decoteau kindly assisted me in troubleshooting (further) the lack of delivery of that message. Please see attached *Exhibit*, a screenshot. When Ms. Decoteau forwarded the message to me, cc’ed to Mr. Branscombe – it failed to show in my Inbox – it went to “junk” mail. According to Ms. Decoteau, town personnel are aware that the Town of Wilton email addresses with a title – such as wiltonta@wiltonnh.gov get caught in spam filters at a significantly higher rate than do Town of Wilton email addresses with names in the title, such as hers, mdecoteau@wiltonnh.gov. For the record, I have had several email exchanges with Ms. Decoteau without any of her previous emails going to the “junk” mail folder.

From an objective perspective,

- Why would the Town not – as specifically requested - email these records to me directly at darrin@drblawoffice.com as .pdf, .jpg, .bmp, .docx, etc., documents attached to email, to minimize costs and maximize efficiency for both our offices, when the opportunity was presented?
- Why – when it is the Town’s obligation to provide the requested information, and the Wilton email addresses getting caught in spam filters is a known issue – had the Town never, not once, checked back with my office to see if I had:
 - Received the 1/7/20 email; or,
 - Assented to or objected to the costly and inefficient suggestion in that email as for the Town’s provision of the information it is legally bound to produce?

The “Timeline” is published as a public document for this Hearing. It is disingenuous of the Building Inspector, in her undated “Timeline”, to repetitively, and in capital letters, assert publicly that undersigned counsel “failed” to come to the Town Office to review the documents. Undersigned counsel didn’t “fail” to respond – the Town failed to fulfill its obligation under RSA 91-A.

Moreover, there is additional request for documents directly from Trustee Charlene Krol to Ms. Ditri that is also unmet from May 12, 2020. The meeting minutes for several months of the Town Boards published on the Town website for 2016 are missing. Charlene Krol has specifically asked Ms. Ditri to provide those minutes because they are not posted on the Town website. That RSA 91-A request has likewise not been acted upon by the Building Inspector.

The Town personnel's lack of diligence prejudiced the applicant's ability to bring – in their appeal – relevant facts to this Board's attention. The "Notice of Violation" is bereft of facts to support the conclusions asserted therein. The applicant and counsel can belatedly see them now for the first time in the Town's responsive document packet and "Timeline".

For example, the allegation that 6+ cars at the Krol residence, questioned by Ms. Ohlund as evidence of "employees"?

Had I been made aware, I could have included in the application the query "Why didn't Ms. Ditri walk the few steps from her office to the Town Clerk's office to check which vehicles are registered to residents at 834 Mason Road?" How hard would it have been for Ms. Ditri to find out at the Town Clerk's office that:

- 4 of the "6+ vehicles" mentioned repetitively in the "Timeline" are personal vehicles of Frank and Charlene Krol,
- 2 are personal vehicles of twenty-year-old Nick Krol,
- 2 are personal vehicles of Chirs Krol,
- 1 is the personal vehicles of Terri Krol, and
- 1 is the personal vehicle of the twenty-year-old lad they took Luke they took in and provided a home for several years ago.

Would not this Board find that an important fact to know when assessing whether the Building Inspector has carried the burden of showing by a preponderance of the evidence a home occupation violation of Section 6.6.1? I would think it would.

In summation, I do not feel it appropriate for the Building Inspector's erroneous allegation that the applicant's counsel failed to go to the Town Hall in January (or thereafter) be left unchallenged in the public record.

Nor is it appropriate for the Building Inspector to conduct a hearing by ambush, and not have provided the applicant with the facts from which sprang her conclusions of violations of 4.6.2, 4.6.4, 4.6.5, and 6.6.1 prior to – or at least in close proximity to – her Notice of Violation letter dated April 8, 2020.

Respectfully submitted,



Darrin R. Brown, Esq. (Bar #: 16827)

DRB/sem

Cc: Client (Trustees)
Christopher Krol
File

Exhibit
6/9/2020

Outlook File Edit View Message Format Tools Window Help

Searching All Mailboxes

decodeau

Home Organize Tools Search

New Email New Items Delete Reply Reply All Forward Move Junk Rules Read/Unread Categorize Follow Up Filter Email Find a Contact Address Book Send & Receive Get Add-ins File Smart File Timer Support Logout Send to OneNote Insights

Favorites

- Sent
- All Accounts
 - Inbox
 - Drafts 31
 - Sent
 - Trash 3854
- Drblawoffice
 - Inbox
 - 1_Active Matter Emails
 - 00 - Active Tasks
 - 00 - Admin & Employer
 - 00 - Completed Tasks
 - 00 - Notifications 1

By: Date Received

Today

- Michele Decoteau
FW: RTK request 12:06 PM
Hello! Here is the email you requested. Cheer...
- darrin@drblawoffice.com
Wilton / RSA 91-A request 11:56 AM
Charlene, I got the "timeline" this morning fro...
- darrin@drblawoffice.com
FW: Abutter notice for ZBA Case... 10:24 AM
Terri - as we are on the phone discussing; see...

Last Week

- Neil Faiman
June 9 Wilton ZBA Meeting 5/28/20
(ZBA members: please let me know if you will...
- Neil Faiman
Abutter notice for ZBA Case #6/9/2... 5/28/20
Attorney Brown, I have noticed a hearing on t...

2 Weeks Ago

- Michele Decoteau
labels 5/26/20
Hello! The labels and check are here!! Thank...
- darrin@drblawoffice.com
Re: application 5/21/20
Hello Michelle, We received the adhesive labe...
- Michele Decoteau
application 5/21/20
Hello Darrin, I want to remind you that you ne...

FW: RTK request

Michele Decoteau <mdecoteau@wiltonnh.gov>

To: darrin@drblawoffice.com

Cc: Paul Branscombe

This message appears to be junk mail. Beware of links in this message. Mark as Not Junk

Hello!
Here is the email you requested.

Cheers!!
Michele

From: Paul Branscombe
Sent: Tuesday, January 7, 2020 6:56 AM
To: darrin@drblawoffice.com
Cc: Michele Decoteau <mdecoteau@wiltonnh.gov>; Janice Pack <adminassist@wiltonnh.gov>
Subject: RTK request

Good morning attorney Brown,
As Norma Ditri will be on medical leave for the next several weeks I am weighing in on this matter to assist you in finalizing and meeting your 91 A request. We have asked our IT provider and others to research the archives to find additional material to add to the documentation that Norma has complied. We would now like to establish a date for you to come into our Town Office to review the records we have put together. Please advise accordingly noting that Mondays, Tuesdays and Thursdays are best for us except for Tuesday the 14th.
Thanks and regards,
Paul.

Paul C. Branscombe
Town Administrator
Town of Wilton
42 Main Street
Wilton, NH 03086
Office: (603) 551-0451 ext. 208

Items: 24

All folders are up to date. Connected to: Drblawoffice

"wiltonnh@wiltonnh.gov" deemed "Junk" mail
by Attorney Brown's Microsoft Exchange Server