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

Date: December 4, 2019

[via: Priority Mail]

Norma Ditri
Building Inspector/Code Enforcement Officer
Town of Wilton
42 Main Street, P.O. Box 213
Wilton, N.H. 03086

Re: 834 Mason Road, Wilton: Your November 5, 2019 Letter to Frank & Charlene Krol

Dear Ms. Ditri,

I have been recently retained to represent the Krol Family Revocable Trust of 2018 in regards to your letter dated November 5, 2019.

I write to you seeking a mutually agreeable resolution of the three alleged Town of Wilton Zoning Ordinance violations. In order to do so, we will need to exchange further documentation. I have not received an email with the photographs you stated you have in the Town's file, as per our agreement on December 5, 2019. Thus, accompanying this letter is a RSA 91-A request, in a more formalized format.

A. Response to November 5, 2019 letter's allegation of violation #3:

(Land Use Laws Section G, Driveway Regulations)

- I have instructed my clients to close and cease use of the second driveway downhill from the house's main driveway. It is my understanding that has already occurred.
- I have instructed my clients to complete a driveway permit application to be submitted to the Town to formally permit a second drive in that location.
 - In the interest of life and safety, a second driveway in that location is desirable and justifiable.
 - My clients have articulated a life-safety stemming from inadequate line-of-sight when vehicles coming down Mason Road are travelling in excess of the posted speed limit. I have reviewed the May 18, 2015 Stipulation concluding the case bearing docket # 458-2015-CV-00107

My Trust client agrees to temporary cessation of use of that second driveway until the Town approves the driveway permit application eliminates that Wilton Zoning Ordinance Violation.

It is my understanding the Town has already ceded, and recognized, that what is an access way to the back property - separate and distinct from the two driveways serving the residential area - is not a *third* driveway. If you are in possession of contradictory information, please produce it forthwith so I can advise my client and respond appropriately to the Town's concern(s) related thereto. Thank you.

B. Response to November 5, 2019 letter's allegation of violation #1:
(Section 4.6 Performance Standards)

- Your letter is devoid of description of how the property owner is allegedly exceeding its obligation to minimize impacts to neighboring properties from emissions of smoke, noise, odors, vibrations, discharges or storm water run-off and thereby not in compliance with State and Federal regulations.
- Your letter is devoid of reference to any evidence thereof, as well.

My Trust client respectfully demands a bill of particulars supporting the Town's allegations, or a formal written rescission of this unsupported allegation.

C. Response to November 5, 2019 letters' allegation of violation #2:
(Section 6.1 Permitted Uses in the General Residential Agricultural District)

"Cease operating a business at your residence."

"Remove all construction equipment and vehicles within thirty."

i. *"Remove all construction equipment and vehicles within thirty."*

In order to squarely address the alleged violation #2, first I must address your improper inclusion of, and reliance upon, the Milford District Court Stipulation. It is not legally enforceable against someone not party to that litigation.

1. That Stipulation is exclusive to the Town of Wilton and the Shattucks.
2. My client was never a party to that litigation.
3. The Stipulation was binding on those Parties only.
4. Nothing in it purports to be a covenant running with the land.
5. The Stipulation does not circumscribe the rights of my client.

It is evident that the Shattucks, in order to buy peace and settle a controversy, agreed to exceed any existing regulation on their right to possess heavy equipment on their property. At the time, their house was under purchase agreement. The Town's triumph was illusory. The Shattuck's concession was hollow.

But the Stipulation with the Shattucks is not binding on a subsequent owner of the property. The Town has no legal right to require this property owner to forego their right to have (within reason) any number of pieces of heavy equipment on their property.

ii. *"Cease operating a business at your residence."*

Kris Krol Excavating is not a business "operating at" my client's residence. A hair-dressing salon can be "operated at" the business owner's residence. Clients and product vendors can

come and go from the business owner's residence. Employees can perform services at the owner's residence on customers. A bookkeeping service can be "operated at" the business owner's residence. Clients and office-supply vendors can come and go from the business owner's residence. Employees can perform services at the owner's residence on customers. A machine shop can be "operated at" the business owner's residence. Clients, vendors, shippers and receivers – all can come and go from the business owner's residence. Employees can make parts for customers at the owner's residence on customers.

An excavating company, by contrast, is not "operated at" the business owner's residence. Is it possible for Kris Krol to excavate a foundation for a somebody else's house at the 834 Mason residence? No, that is an impossibility. Can Kris Krol excavate a pipeline that serves a new development for a gas company at the 834 Mason Road residence? No, that likewise is an impossibility. The bottom line is, Kris Krol Excavation does not "operate at" 834 Mason Road. It "operates" elsewhere.

An owner-operator having heavy equipment, even multiple pieces, at one's residence, that is used to perform excavation services elsewhere, anywhere other than 834 Mason Road, is not a violation of Wilton Zoning Ordinance 6.1. Moreover, that same equipment is useful on the property – located in the General Residence and Agricultural District – for residential maintenance and agricultural uses by the property owners. It is not "operating a business at the residence."

Parking a heavy truck, even multiple trucks, owned by an owner-operator - at his residence - that is used to perform excavation services elsewhere, anywhere other than 834 Mason Road, is not a violation of Wilton Zoning Ordinance 6.1. It is not "operating a business at the residence."

Driving away to work in the morning, driving home in the afternoon, and parking the heavy truck and equipment that he used to perform excavation services elsewhere, anywhere other than 834 Mason Road, outside the residence where Mr. Krol lays his head overnight, is not a violation of Wilton Zoning Ordinance 6.1. It is not "operating a business at the residence."

Nor is it a violation of Section 5.3.1, if that is what the Town will next infer. Virtually every tradesmen, tow truck operator, bread-delivery route driver, etc., drives their owner-operated business vehicles home to park them overnight, every night. Those businesses are not "home occupations" subject regulation under Section 5.3.1. Mr. Krol's performance of excavation services elsewhere each work-day, then driving his owner-operated vehicles home to park them overnight likewise is not a "home-occupation".

The ineluctable conclusion is the Town of Wilton does not have legal grounds to require Mr. Krol to remove any piece of construction equipment from the 834 Mason Road property, let alone all of them.

Conclusion

At this time I am unaware of any legal authority supporting the Town's demands that my Trust client remove equipment from the 834 Mason Road property. I am unaware of any legal

authority concluding that Kris Krol Excavation's business model is prohibitable under Wilton Zoning Ordinance Sections 6.1, 5.3.1, or any other regulatory power.

I respectfully request you confer within your Town offices and/or with town counsel and then let me know if there are factors existing which undermine the foregoing analysis. If so, please promptly provide me with all case law supporting any contrary legal position.

If the Town can provide copies of legally binding authority backing the demands made in the November 5, 2019 letter, I will share those reference materials and legal memoranda with my Trust client, along with the materials responsive to the accompanying RSA 91-A request.

Very Truly Yours,



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

DRB/sem

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Paul Branscombe

From: darrin@drblawoffice.com
Sent: Monday, December 16, 2019 3:47 PM
To: Norma Ditri
Cc: jpasay@dtclawyers.com; Michele Decoteau; Paul Branscombe; Jane Farrell
Subject: Re: RSA 91-A Request

Good Afternoon,

If they only have you there 3 days/week, that sounds reasonable. No worries. Thank you for letting me know.

Regards,

Darrin R. Brown, Esq.

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From: Norma Ditri <nditri@wiltonnh.gov>
Date: Monday, December 16, 2019 at 3:44 PM
To: "Darrin Brown Law Group, PLLC" <darrin@drblawoffice.com>
Cc: "jpasay@dtclawyers.com" <jpasay@dtclawyers.com>, Michele Decoteau <mdecoteau@wiltonnh.gov>, Paul Branscombe <wiltonta@wiltonnh.gov>, Jane Farrell <jfarrell@wiltonnh.gov>
Subject: RSA 91-A Request

Dear Mr. Brown,

I am in receipt of your RSA 91-A and Part 1, Article 8 of the NH Constitution Request regarding property at 834 Mason Road, Wilton, NH.

The package containing three letters from you was received on Thursday Dec. 12, 2019. I work three days per week. In accordance with the Town of Wilton's Policy for Request for Governmental Documents and Records I acknowledge the request and will grant said request within ten (10) business days.

Please confirm your receipt of this email.

Sincerely,
Norma Ditri