



## Town of Wilton

### Building Department

42 Main Street • P.O. Box 213 • Wilton, NH 03086

Phone: (603) 654-3960 • Fax: (603) 654-6663

## NOTICE OF VIOLATION

October 27, 2020

### SENT VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED AND FIRST-CLASS MAIL

David & Jennifer Langton  
212 Fitchburg Road  
Townsend, MA 01469

### **RE: Subsurface System Permit Violation, 66 Temple Road, Wilton, NH**

Dear David & Jennifer,

Pursuant to New Hampshire RSA 676:17 and the Town of Wilton's Zoning Ordinance, Section 4.2.1, you are hereby notified that you are in violation of the above-referenced ordinances as well as RSA chapter 485-A and its implementing regulations, the Subdivision and Individual Sewage Disposal System (ISDS) Design Rules at Env-Wq 1000.

On September 24, 2020, I received a complaint regarding a septic or gray water tank being installed at the above-referenced property. Upon my investigation of the complaint, I determined that the installation of a subsurface tank was in progress. There is no proper approval from the NH Department of Environmental Services Subsurface Systems Bureau (SSB) on file with the Town and the Department of Environmental Services has confirmed that no permit has been sought or granted for the work. I further determined that this septic-related work was in process by a crew without a license. I informed you on September 24, 2020 that the work you had done was not permitted and therefore unlawful. In addition, I received notification that you covered the tank when I expressly told the workers on site not to do so.

### **A. Ordinances, regulations, provisions, specifications, or conditions that are being violated**

#### **1. Town of Wilton Zoning Ordinance, Section 4.2.1**

Section 4.2.1 of the Zoning Ordinance provides that all individual septic systems "shall be constructed and maintained" in accordance with State standards. Section 4.2.1 further requires that systems be set back from wetlands and water bodies. In addition, systems cannot be located in poorly drained soils. Furthermore, all systems must be inspected and approved by the State prior to covering.

By way of further explanation as to the "State standards" implicated in this case, pursuant to RSA 485-A:4 and N.H. Admin R., Env-Wq 1003.01, any septic system installed within the last 50 years and/or work being performed on your effluent disposal area (EDA – also known as leach field) must receive approval from the DES SSB before any work is initiated. Here, none of the required State permits are

on file with the Town and, as indicated above, work has already commenced.

**B. Corrective Action Required**

1. Immediately cease all unpermitted work on the Property, including any work related to the subsurface tank.
2. Pursuant to DES Regulations, take the action set forth in Section E, below, which DES requires for occupancy to be continued while your permit and approval applications are pending.
3. Retain the services of a NH State-permitted septic designer to prepare and submit an application to the DES SSB with proposed septic system plans.<sup>1</sup>
4. Submit your plans to the Town Building Department for review and compliance with Town's Zoning Ordinance, including Section 4.2.1.
5. Obtain approval from DES to construct the system, which DES refers to as the Construction Approval.
6. Obtain approval from DES to cover and operate the system; which DES refers to as the Operational Approval; and
7. Operate and maintain the system in accordance with Env-Wq 1023 ("the Rules").

If you have any questions regarding your obligation to perform the above corrective actions, please contact [Kevin.Kaveny@des.nh.gov](mailto:Kevin.Kaveny@des.nh.gov) or me at (603) 654-3960 or [nditri@wiltonnh.gov](mailto:nditri@wiltonnh.gov)

**C. Time Frame to Complete Corrective Action**

1. You must immediately take corrective actions #1 and #2.
2. You must take corrective actions #3 and #4 by **November 12, 2020, at 4PM.**
3. After your applications are submitted, you must continue to make prompt and concerted efforts to meet all Town and DES approval requirements.

Failure to comply with the above orders within that time frame will result in the Town of Wilton pursuing all legal and equitable remedies available against you pursuant to RSA 676:15 and RSA 676:17, to include possible injunctive relief in Superior Court. In the event that you fail to take the above corrective actions, this Notice of Violation constitutes notice that the Town will pursue fines in the form of civil penalties for each day that the property remains in violation after September 24, 2020, pursuant to RSA 676:17, I. Furthermore, the Town will seek reimbursement of its costs and reasonable attorney's fees incurred by the Town resulting from the enforcement of this matter through the courts pursuant to RSA 676:17, II. RSA 676:17, I and II state as follows:

- I. Any person who violates any of the provisions of ... any local ordinance, code, ... or any provision or specification of any ... any local ... land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall

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<sup>1</sup> Under NH law, the property owner only has the right to design and build their own ISDS so as long as you provide documentation that this is your primary domicile. Our tax records show your address as 212 Fitchburg Road, Townsend, Massachusetts.

be subject to a civil penalty not to exceed \$275 for the first offense and \$550 for subsequent offenses for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. (Emphasis added).

- II. In any legal action brought by a municipality to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any local ordinance, code or regulation adopted under this title, or to enforce any planning board, zoning board of adjustment or building code board of appeals decision made pursuant to this title, or to seek the payment of any fine levied under paragraph I, the municipality shall recover its costs and reasonable attorney's fees actually expended in pursuing the legal action if it is found to be a prevailing party in the action. For the purposes of this paragraph, recoverable costs shall include all out-of-pocket expenses actually incurred, including but not limited to, inspection fees, expert fees and investigatory expenses. (Emphasis added).

#### D. Continuing Violations

Should the above referenced violation(s) continue to exist on the Property after November 12, 2020, **each day thereafter will constitute a separate zoning violation, for which this Notice of Violation makes you aware. Pursuant to RSA 676:17 I, you will be subject to a civil penalty of \$550 for each additional day that the subject violation remains on the property.**

This Violation Notice constitutes notice to you of each subsequent violation and the potential for significant civil penalties therefor.

#### E. DES Enforcement

The Town notes that you are required to follow all applicable DES regulations, including N.H. Admin. R., Env-Wq 1000 et seq. DES has its own enforcement authority, including but not limited to issuing an Administrative Order which will be attached to your Property deed, issuing a Notice to Vacate, or referring the matter to the New Hampshire Department of Justice for injunctive relief.

DES has told the Town that DES may not require you to vacate the premises if you immediately have the septic tank pumped and the sewage properly disposed of in accordance with NH Administrative Rule Env-Wq 1600; and, in the future, at sufficiently frequent intervals to prevent further overflow into the effluent disposal area (EDA), drywell, or any other point of source discharge. If this alternative method of pumping the septic tank is chosen, please prepare a letter/email notifying the NH DES and the Town of Wilton of your intended actions AND retain all of the pumping receipts for submission to the NH DES and the Town of Wilton. If there is no septic tank, the water connection must be disconnected until which point the proposed septic system is installed and receives Operational Approval from the NHDES.

Your Septic Designer can submit a completed Application for ISDS Approval to <https://www4.des.state.nh.us/OnestopDataProviders/DESLogin.aspx>

or hard copies of the completed Application to:

Subsurface Systems Bureau  
Land Resources Management  
NH Department of Environmental Services  
PO Box 95  
Concord, NH 03302-0095

Please contact me at (603) 654-3960 [nditri@wiltonnh.gov](mailto:nditri@wiltonnh.gov) or [Kevin.Kaveny@des.nh.gov](mailto:Kevin.Kaveny@des.nh.gov) at NHDES as soon as you are able.

The Town of Wilton and NHDES Subsurface Systems Bureau would like to thank you in advance for your expected cooperation.

Sincerely,

Norma Ditri  
Town of Wilton, Zoning Enforcement Officer  
Certified Mail: 7020 0640 0000 6651 5420

cc: NHDES, Kevin J. Kaveny  
Wilton Health Officer