



Land Use Office
Town of Wilton
42 Main Street
Wilton, NH 03086

Staff Report

Date: January 8, 2021

Lot Background

Map & Lot: F-003-2
Address: Isaac Frye
Lot size: 8.85 acres
Frontage: 58.08 feet
Zone: RA and in the following overlay districts:
Wetlands Conservation District
Aquifer Protection District

Lot Background

2019 – The Chamberlins proposed to use this lot for an excavation then single family home with barn. They withdrew the application after the first meeting when it was determined that excavating 190,000 cubic yards was more than “incidental” and this was not going to be approved.

2016 – James Kennedy proposed to Subdivide F-003 into two lots – 4.04 acres & 8.85 acres. This subdivision originally included 90,000 cubic yards of material to be removed before building but the Planning Board said no. This was removed from the proposal and the Planning Board included notes on the recorded plan that ANY excavation or removal of material must come before the Planning Board.

2007 – Harold James Kennedy applied to the Planning Board for a Subdivision of F-003 (came in in December 2006). The application called for the removal of 90,000 cubic yards of material. This was denied for having more material being removed than was incidental to construction.

2006 – The ZBA heard a variance request to use part of F-003 (not yet subdivided) as an excavation site prior to turning it into a three lot subdivision with multifamily housing. The Variance was not approved. This case had very detailed reasons for denial and a traffic study. The abutters hired a lawyer to help make their case not to approve.

List of Exhibits

- 2019 – Planning Board Minutes from May and June regarding EX02 – Chamberlin.
- 2016 – Notice of Decision
- 2016 – Notes from the Subdivision Plan Tax Map Lot F/3 for J. James Kennedy and a single page plan
- 2007 – Planning Board Meeting Minutes – this vote was to not approve the subdivision application of Harold James Kennedy.
- 2007 – Notice of Decision from the Planning Board



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2006 – Zoning Board of Adjustment case overview of 5/9/06–2

2006 – Minutes for May 9, 2006

2006 – Minutes June 13, 2009

2006 – Traffic Study by Laurie M. Rauseo

TOWN OF WILTON PLANNING BOARD

Approved Minutes

DATE: May 15, 2019
TIME: 7:00 PM
PLACE: Town Hall, Courtroom
PRESENT: Karon Walker, Alec MacMartin, Todd Clough, Bart Hunter, Pam Clemens, Matt Fish, Neil Faiman
Staff: NRPC Representatives John Goeman and Cassie Mullen, and Land Use Administrator Michele Decoteau
Attendees: Eleanor Owen, Tom Barnett, Jeff Maher, Mark McGettigan, Jim McGettigan, Michael McGettigan, Fred Dupuis, Deana Darby, Sam Proctor, Peter Howd, Ron Dumont, Greg Kaminstein, David Graham, Tim Wyllie, Joe Wyllie, Shannon Silva, Robert Silva, Patsy Belt, Tom Belt, Art Siciliano, Ellen McGettigan, Sandy Zielie, Matt Bangert, Felice Fullam, Les Scenna, Gretchen Hutchenson, Cheryl Allenberg, Bob Allenberg, Jerry Aubel, E. Beven Buffum, Paul Buffum, Greg Joas, Laurie Bourgoine, Joan Ross, Daniel Ross, Joan Ross, Christine Keller, Bob Keller, Dan Dillion, Gerry Tanguay, Chris Tanguay, M. Ploof (Fieldstone Land Consultants), C. Brannon (Fieldstone Land Consultants)

05.15.19 PB

1. Preliminaries

A. MacMartin opened the meeting at 7:03 PM. A. MacMartin said the Board would evaluate at 9:30 PM to see where we were in the agenda and decide if the meeting needed to be continued at that point.

- Minutes from 05.01.09
 - Line 38 ... lower case L on lumens
 - Line 39 ... change is to are
 - Line 51 ... conditionS
 - Line 52 ... merge sentences and end with "...or not."

B. Hunter MOVED to accept the minutes as corrected. K. Walker SECONDED. All in Favor – M. Fish and P. Clemens abstained.

2. Continued Case: SD07-0818 – Talisman

A. MacMartin opened the hearing by reading the public notice.

S. Proctor presented a letter from Anthony Costello of AC Engineering & Consulting regarding the drainage, house sites, driveways, and lots. He presented a new plan with new drainage information showing how they will take the water from the other side of the road and will be draining it away from the road and meet the driveway standards. He presented driveway permits.

A. MacMartin asked if the AC Engineering shows if any water leaves the site downhill. S. Proctor said he would have A. Siciliano answer. A. Siciliano said that these issues will be addressed. He said that the water is from culvert and sheet flow. He showed the plan had existing drainage and what the drainage will be after the construction. He reviewed each lot and explained how the water would be diverted around the houses and the septic systems. He said they aren't changing too much.

A. MacMartin said he expects to have this reviewed by an engineer and this information will be given to the applicant but the Planning Board needs all the information including the calculations and the whole 9 yards. S. Proctor said even yesterday there wasn't much water. M. Fish said that the only one area that has water close to year round is (F-88-5). A. Siciliano said if the Planning Board is going to do a review, they need to give the Planning Board the drainage calculations. S. Proctor said that the plans will be printed next month and will be in color and that will make this easier to see and understand. He pointed out that on F-88-5, the area that is wet will be dry during the summer.

A. MacMartin asked for Abutter Comments.

J. McGettigan said that this week, the power companies were trying to do work on the cell tower and power lines. The power company couldn't go along the power lines easement because it was too wet. They had to leave early yesterday since it was too wet. The equipment could not travel on the power lines, they had to come out one end and to go around on the road.

B. Hunter asked about lot F-88-7. There is a hammer head driveway discussed but it isn't shown completely. What is the applicant planning to do? S. Proctor said they haven't designed the driveway for that house, and will have to put in a culvert. A. Siciliano said that that information can be added to the plan. A. MacMartin asked them to include at least the first part of the driveway to ensure the drainage calculations are complete.

N. Faiman MOVED to continue the case to June 19, 2019, at 7:30 PM. T. Clough SECONDED. All in Favor.

3. Continued Case: EX01-0119 – Quinn Brothers

This application seeks to amend the site plan for reclamation for lot E-023. The applicant was not present and M. Fish said Town Counsel was working with the applicant.

M. Fish MOVED to continue the case to June 19, 2019, at 7:30 PM. K. Walker SECONDED. All in Favor.

4. Continued Case: SD02-0219 – Graham

A. MacMartin opened the hearing by reading the public notice.

M. Ploof, Fieldstone Land Consultants, presented the revisions since the last meeting and provided new maps. M. Ploof reviewed the plan to subdivide the lot and the final remaining issues that needed to be resolved. He provided the DES and DOT approvals and they were noted on the plan.

N. Faiman had walked the monuments. They were all in place.

M. Fish MOVED to conditionally approve the subdivision with signatures and receipt of checks. N. Faiman SECONDED. All in Favor

5. Continued Case: SD03-0319 – Dupuis

A. MacMartin opened the hearing by reading the public notice.

A. Siciliano reviewed the revision. The key was updated, amended the driveway and set the lot corners, added note 6 - served by town water and sewer and added the driveway inset to show that there is adequate room for cars to reach the back lot if there are cars at the front house.

M. Decoteau will add the documents from the Town Counsel regarding the driveway easement. Town Counsel had no concerns.

N. Faiman MOVED to grant the requested waivers. K. Walker SECONDED. All in Favor.

N. Faiman MOVED to accept the plan. M. Fish SECONDED. All in Favor.

N. Faiman MOVED to approve the plan conditional on walking the bounds and acceptance of the fees. M. Fish SECONDED All in Favor.

6. Continued Case: SD04-0319 – Silva

A. MacMartin opened the hearing by reading the public notice.

M. Ploof from Fieldstone Land Services, provided new plans. The plan was broken into two plats. The first sheet is the lot line revision creating Parcel A that will be added to A- 38 increasing the frontage by just under 6 feet. After the lot line adjustment the lot numbers change and the second sheet depicts the subdivision of A 38-1. The remainder will be a back lot. The monuments were also added.

N. Faiman, B. Hunter, and K. Walker walked the bounds but the two changes at the front are drill holes and the drill hole for the moved lot line is in subsurface rock. It may be plowed under this winter. Mike said they usually set them a bit subsurface and paint them up. A. MacMartin suggested a “witness pin” to find it again. B. Hunter said there was supposed to be an iron pin found. M. Ploof said that it is about five inches down. B. Hunter said that was fine since you can use a metal detector.

M. Ploof said he has a device to add a pin to a drill hole. This serves two purposes.

A. MacMartin suggested adding to a note that the pin is buried.

J. Goeman said that there were concerns about the location of the driveway to the back lot and how close it is to the wetlands. M. Ploof said the driveway is about 50 feet away. A. MacMartin asked for an idea of where the driveway would be located. M. Ploof showed where it is likely to be. A. MacMartin asked if it was worth putting a note on the plan that a driveway serving F-38 -2 would have to be 50 feet away from the wetland. Just so that doesn't get lost in the shuffle.

No abutter comments.

Remaining action Items:

- Add to the notes: Proposed driveway within the westerly most wetland setback shall not drain water into that delineated wetland.

- Drill pin into the hole on the Northwest corner and add note to the plan that the drill pin was added
- Well radius needs to be added to the plan

N. F MOVED to approve the plan conditional on the notes above being added to on the plan and payment of fees. K. Walker SECONDED. All in favor.

7. Case EX02– 0419 - Chamberlin

A. MacMartin opened the hearing by reading the Public Notice.

N. Faiman stepped away from the table.

C. Brannon, Fieldstone Land Services, represented the owners and reviewed the plan. A. MacMartin asked if the applicant was planning to seek a Variance. C. Brannon said no and cited the 2015 subdivision plan, specifically Note 9. He read the note: *No gravel or earth materials shall be removed from the site without further Planning Board approval.*

M. Fish shared that this lot has a long history of people wanting to remove gravel from it and is very complicated.

The Planning Board cut short the discussion about the plan and wanted to be clear as to what incidental gravel removal is and what an excavation under the guise of a subdivision is. A number of the Board members expressed the opinion that this amount of material is not incidental.

C. Brannon said he was seeking information. He looked at the local and state ordinance and there is no differentiation between incidental and non-incidental excavation. Where is incidental defined?

A. MacMartin said the Board is having trouble with the concept that if you are taking 190,000 cubic yards of material that is not a gravel excavation. And looking at the last note on the plan, this lot will be restored to an open field.

C. Brannon asked where is incidental defined. A. MacMartin said the gravel operation is not incidental.

C. Brannon said there is a steep slope, and in order to put in any driveway and a house you will have to remove a lot of material. K. Walker said she figured out what this amount is – if you take 31 acres of land and dig down five feet on the entire 31 acres. C. Brannon said that this is an 8 acre piece of property and they are working on 4 acres of this. The owners have talked to a number of contractors. They are not doing anything with it yet but they all felt a lot of material would have to be removed.

A. MacMartin this is an excavation by our regulations and if you would sell this material and then you are a commercial gravel operation. C. Brannon said that is not supported by the regulations. Any time you have even a cubic yard of material from a house site, the contractor can sell it but isn't a commercial gravel operation.

A. MacMartin said the Board will want to involve Town Counsel for an opinion.

C. Brannon requested a continuance and that they believed they fell within the Ordinance.

B. Hunter MOVED to continue to June 19, 2019, at 7:30 PM. T. Clough SECONDED. All in Favor.

Dan Dillion, 539 Issac Frye Highway, offered to speak on behalf of the many abutters present. The Board asked him to hold off until the next meeting where the Board will take testimony.

D. Ross said this seems deceptive. But what is the cost to remove to 900 dump trucks of material to build a house? The Board asked him also to wait until the next meeting.

S. Zielie asked a procedural question. What is the next step? A. MacMartin responded that we will go to the Town Counsel. S. Zielie asked if this would be made public. A. MacMartin said it will be up to the Board if that be made public at that time.

P. Buffum shared an article he had saved from 2006 regarding the excavation.

T. Barnett wanted to provide a letter from a lawyer. A. MacMartin said that the Board will hold off on substance until the next meeting.

S. Proctor asked if the Town Counsel letter will be made public? A. MacMartin said the Board will decide.

J. Ross, Wilson Road, asked why couldn't the Board make the decision that this incidental? A. MacMartin said that that is a legal opinion.

N. Faiman returned to the table.

8. Conceptual Subdivision Meeting

D-99 off Route 101 – 55+ Housing Development

C. Brannon, Fieldstone Land Consultants, wanted to have an informal discussion about how the lot owner can use their lot. This is a large lot, 24 acres in a good location. The owners are looking to build an elderly housing development. This would be a great fit for the location, but wanted to see what the Board's appetite is for this type of project in this location. There is already municipal water and sewer are close but they were not planning to extend the sewer.

The Board encouraged the owners to move forward with their ideas but to read the rules carefully as they are slightly different than surrounding towns.

9. Correspondence & Sign Invoices

Noted

10. Other Business

- Will Melcher has pictures of all the store fronts and in the process of inputting all that data.
- Hawthorn Drive - M. Fish discussed the PB using RSA 646 to revoke the approval. A. MacMartin said we should ask Town Counsel.
- Master Plan - J. Goeman asked the Board to review some other Town's Master Plans. Many include recommendations but some have generalizations and then in a Land Use Section would contain the recommendations in a single location.
Action Items: J. Goeman will resend. K. Walker will abstract some of the other towns and share with the Board.

11. Adjourn

B. Hunter MOVED to Adjourn at 9:06. PM. M. Fish SECONDED. All in Favor

Next meeting June 5, 2019

Respectfully submitted by Michele Decoteau, Land Use Administrator

Approved 06.05.19

Exhibits on file at the Land Use office:

Sign In Sheet 05.15.19

Article from January 22, 2017 Telegraph, Gravel-removing subdivision plan is rejected.

Letter from AC Engineering, 1 pg

TOWN OF WILTON PLANNING BOARD

Approved Minutes

DATE: June 19, 2019
TIME: 7:00 PM
PLACE: Town Hall, Courtroom
PRESENT: Bart Hunter, Todd Clough, Alec MacMartin, Pam Clemens, Karon Walker, Matt Fish
Staff: NRPC Representative Mason Twombly and Land Use Administrator Michele Decoteau
Attendees: Kevin Patterson, Art Siciliano, Sam Proctor, Ron Dumont, Alison Dumont, Mark McGettigan, Ellie McGettigan, Jim McGettigan, Cheryl Allensberg, Robert Allensberg, Michael McGettigan

1. Preliminaries:

- MacMartin opened the meeting at 7:02 PM
- Minutes from 06.05.19
 - Line 9 ... Representatives with no “s”
 - Line 19 ... add “his” before application
 - Line 26 ... change “how” to “whether”
 - Line 28 ... change “is” to “are”
 - Line 37 ... add “is” before “easy”
 - Line 38 ... change “it” to “them”
 - Line 50 ... change “suggests” to “suggested”
 - Line 55 ... add “specific” before “suggestions” and add i.e., the town should...
 - Line 56 ... add “truck” before “loads”
 - Line 58 ... change “dumps” to “exits”
 - Line 60 ... notionS
 - Line 61 ... delete “in”
 - Line 62 ... fix rail spur
 - Line 66 ... change sentence to read: This general version is not actionable.
 - Line 70 ... change “wants” to “wanted”; change “two” to “examples of two”
 - Line 74 ... add “s” to “development”
 - Line 76 ... change “I” to “he”
 - Line 79 ... add “recommendation” after at; delete “to”
 - Line 82 ... delete “of”
 - Line 92 ... redlining
 - Line 102 ... change “kept” to “tracked”
 - Line 105 ... change “requests” to “request”
 - Line 106 ... add “ M. Decoteau was asked to...” before “send”
 - Line 110 ... change “build” to “built”

06.19.19
PB

K. Walker MOVED to accept the Minutes as corrected. T. Clough SECONDED. All in Favor.
M. Fish, P. Clemens, and B. Hunter abstained.

2. EX03-646-1986 White

M. Fish explained what he saw when he inspected the excavation. He completed the inspection report for 2019.

M. Fish MOVED to APPROVE the renewal application for EX03 -646-1986 for Souhegan Waterfall LLC. B. Hunter SECONDED. All in Favor.

3. SD07-0818 Talisman

M. Twombly provided new staff reports from J. Goeman. A. Siciliano provided new maps. He separated five lots that shared drainage (Lots F-088-4 - 8) on the map and for discussion. The Board asked about the type of houses that would be built. A. Siciliano said he was not sure what type of house but that the developer would mandate drip edge trenching. A. MacMartin asked if this would be part of the plan and would be provided to new builders and owners. A. Siciliano said yes, that will be added to the plan. S. Proctor said there would be zero impact with the drip edge trench. He said that he and A. Siciliano would work to design the road and drainage for the other four lots for next month. He agreed to provide the easement language next month.

A. MacMartin asked if there were drainage devices for each driveway or are they designed to shed water. A. Siciliano said that these details will be determined by the engineer. He confirmed that he understood there could be no off site drainage. M. Fish asked if they were concerned about the drainage into the wetlands.

K. Walker asked about the status of the woods road. S. Proctor said it was an old logging road and not part of the subdivision. He said it could be taken off the plan.

B. Hunter said he was confused about this notation on lot F-88-1 to see Note 5. Why not do the lot line adjustment now? A. Siciliano said if we do that now, it is a done deal. He said they won't do the lot line adjustment if the subdivision isn't approved. S. Proctor said that often in a situation like this, you do the simultaneous lot line adjustment approval with the subdivision. M. Fish asked if this was inspired by the recent Silva case where the detail wasn't clear on one map, it needed two.

Ellen McGettigan asked about the cell tower road. Is there a certain number of feet that road has to be from the abutters? M. Fish asked if this was going to be an easement? A. MacMartin asked E. McGettigan if she meant the road that is going to serve lots 10-11-12. And your question is if there is a setback for that road? E. McGettigan said yes, that is correct. N. Faiman said this came up earlier. This road to the cell tower is going to become a driveway serving these lots. There was some concern that this woods road gets half a dozen trips a month and now this is now going to be serving four houses. He recalled that the road was going to be moved. M. Fish clarified, do you mean from the cluster subdivision? N. Faiman said in a cluster subdivision you have substantial buffers along the edge. A. MacMartin said he thought we had a discussion about this but S. Proctor is not asking for a density bonus. S. Proctor responded, we are 50% or less what the density could be.

M. Fish said this fits under Section C B 1 - he read the section:

Section C. B1: To promote the conservation of the natural environment, preservation of wetlands and wildlife habitat, and the development of community uses in harmony with the natural features of the land and provide for the appropriate use of the terrain within the cluster development.

N. Faïman said that in Section C 3 it said that all development shall be set back a minimal 1.5 times the underlying setback. M. Fish said Section C 5 requires a landscaped buffer adequate to buffer from adjacent uses. A. MacMartin (page A-18) said this doesn't get in to setbacks. If you are doing a cluster subdivision, you take 1.5 times the underlying zone setback. Anything that needs a building permit can't be in a setback.

M. Fish asked about underground utilities for the cell tower. A. MacMartin asked how are utilities being provided? S. Proctor said they haven't gotten that far in their plan. A. MacMartin said the setback would normally be along the edge of the subdivision but this is taken up by a road.

K. Walker asked for clarification about the application and if they were looking for approval of just these 5 lots. S. Proctor said they are providing more information to the board but will be looking for approval for all them in the end. A. MacMartin said that this road that has little traffic currently will serve three houses. This will substantially increase the traffic right next to the abutters. Do you have any solution to this? Will there be an easement that moves the road to provide a buffer? S. Proctor said the road is perfectly good but it isn't as wide as we need. We planned to widen it on the side that is away from the neighbors. He said he didn't see where the regulations say we can't have a driveway in the buffer. A. Martin said we may have to ask Town Counsel. If the road was over 52.5 feet away from the lot line, then you have met the cluster subdivision regulations. S. Proctor asked if that meant they can't have the road in the setback. A. MacMartin said it is activity, not just building. This proposal is substantially increasing the activity in the buffer and the abutters have raised concerns about that. A. Siciliano said we need to know now so we can design the road.

Jim McGettigan said the road would have to be moved quite a ways away. If you move it 50 feet you are in the culvert. If they moved the gate down, it would be on the Milford line. In order to get on the power lines, you have to build another road. A. MacMartin said this plan shows the boundary of a stone wall. Only a short portion of the road is in this subdivision.

J. McGettigan said there were white stakes on his property and he wondered why. Art said they were on the property line and at the request of Dig Safe. A. Siciliano asked what we do with that road. We can't change that road. We can't plant trees in the road.

M. McGettigan asked if that right of way would stay. Would Eversource have access to that new road? They will still need access somehow. M. Fish said Eversource is not ever going to allow trees growing on the raceway over their utilities.

Bob Allen said he was asking about the buffer since his father-in-law is right on this property line. M. Fish said we do allow driveways right up to the lot line.

Alison Dumont asked if was determined that this met the requirements to be a cluster subdivision? M. Fish said yes.

Bob Allen said that the traffic is pretty bad right now, especially from Abbot Hill. There will be 18 extra cars with these house and if they have kids, there might be more. He was also concerned about leach fields and dug wells.

A. MacMartin said we can ask for a peer review engineer. Can we use NRPC resources to look at traffic?

M. McGettigan asked what makes it a cluster subdivision? A. MacMartin said innovative land use and there is open space and they are talking about creating open space trails. M. Fish said we had had a spirited discussion. M. McGettigan said these lots vary in size from 0.9 acres to over 7 acres. A. MacMartin said cluster subdivision covers a lot of different things in land use. If you were trying to maximize the density, you'd be looking at small lots with similar size. This applicant wants to incorporate common land. M. McGettigan said this wasn't buildable land in the back that is being used for open space. S. Proctor said he hoped the abutters appreciate that if he had asked for a density bonus he would be asking for like 23 houses.

M. McGettigan said he agreed with S. Proctor's right to develop his land, he just want to see it done right. Are there any other developments in town with their own water and septic? The Board listed a few. It was not unique. M. Fish said there are a few that are approved on paper. M. McGettigan asked what if he wanted to subdivide, would this affect him? The Board said no.

N. Faiman MOVED to continue to July 17, 2019, at 7:30PM. M. Fish SECONDED. All in favor.

4. EX01 - Quinn

M. Fish reported that the paperwork is back from the lawyers and the Quinns are coming into the Select Board in two weeks.

M. Fish MOVED to continue to July 17, 2019, at 7:30PM. K. Walker SECONDED. All in favor.

5. SP01-0519

A. MacMartin read the public notice. N. Faiman said that he had participated in the ZBA case approving the Special Exception, but he felt that did not preclude him from participating.

P. Clemens and K. Walker did a site visit.

A. MacMartin asked N. Faiman if there were any constraints? N. Faiman said that the only constraint is that no rental period could exceed 60 days. He said that he had a note about this approval: this is a Bed and Breakfast, but this is also a dwelling unit. The reason we have a B&B ordinance is that a B&B is an intense use that is not clearly incidental and subordinate to the dwelling.

A. MacMartin asked if there were two units on the property. N. Faiman said yes, there are two dwelling units.

K. Peterson presented his property. He explained what the carriage house is like. He said that guests can clearly find his B&B, but neighbors can't tell he has a business.

A. MacMartin said he had some concerns about the plan and that it didn't show the two dwellings clearly. P. Clemens said she had concerns about the parking. It was a little tight. K. Peterson said he and his wife park on the left and there are two spaces on the right next to the walk. We give guests the right side. We can only have three guests and they typically arrive together.
K. Walker wanted to try to clarify the number of spots needed. A. MacMartin said we define the size of parking spaces in the Ordinance.

P. Clemens said she knew the safety inspection still needed to be completed. In the bedroom on the second story the windows are narrow. M. Decoteau provided Norma Ditri's inspection report.
P. Clemens said there has to be a window of 27 inches wide. A. MacMartin said this was really for the Fire Chief inspector's inspection.

A. MacMartin asked about flood lights. Are they downcast or facing out? Down or out? K. Peterson said it was downcast lighting.

A. MacMartin reviewed the Action items:

- Amend the Site Plan to show two units
- Add downcast lighting
- Add a note about the ZBA decision - No single rental period of more than 60 days.
- Still need Fire Chief Inspection
- Traffic - need to address in the approval
- No sign approved at this time

K. Walker asked about the deeded right of way on one side of the property. K. Peterson said this is so we can get a lawnmower in the back.

B. Hunter MOVED to continue to July 17, 2019, at 7:30PM. K. Walker SECONDED. All in Favor.

6. Continued Case: SD02-0219 – Graham

Recorded at HCRD Plan # 40162

7. Continued Case: SD03-0319 – Dupuis

Recorded at HCRD Plan # 40172

8. Continued Case: SD04-0319 – Silva

Recorded at HCRD Plan # 40186

Withdrew

9. Chamberlin

M. Decoteau said that N. Chamberlin requested his fees be returned. The Board discussed what costs would be taken out of the application fee and return the remainder. M. Decoteau will move forward on this.

The Board discussed if they need to define what is “incidental” and the demarcation between a gravel operation and “incidental” with Town Counsel. K. Walker asked if it would be more economical if we went to him with a definition. N. Faiman said the statute carves out incidental but explicitly excludes incidental from the ordinance covering construction. Exclusively incidental is a term of art. A. MacMartin said he thought it would behooves us to have something in our ordinance. K. Walker said we define “incidental” however we want to; we need to give guidance. A. MacMartin if you don’t like it, he can challenge it in court.

10. Other Business

Hawthorn Brook Drive – M. Fish reviewed the past steps about the Fire Pond. The Select Board would like a fire pond or cistern built. A. MacMartin asked if it has passed out of the ownership of the developer. This might be a different situation. The Select Board should contact Town Counsel to see what the options are.

M. Fish said we should let the developer know that we want to do this. We would need to change our procedures to avoid this. We should bond every part of a site plan and subdivision. A. MacMartin asked if there were conditions noted on the plan about the fire pond and building permits? M. Decoteau said she didn’t recall them.

M. Fish reviewed the MS4 permit and the upcoming steps.

M. Fish reviewed the Horseshoe. The town is not going to purchase the Horseshoe. The ConCom felt that it wanted to move forward and use the LChip funding to purchase it but it wanted to see strong support from the Select Board. B. Hunter provided more details. The ConCom felt that it was not worth moving forward without the full support of the Select Board. M. Fish said this just means that the ConCom won’t be going through LChip funding; they may find other sources. K. Walker asked if the ConCom is letting go of the option to purchase? B. Hunter said no, they still want to purchase it.

M. Fish updated the Board about the Reservoirs. The Town is still waiting to hear about the hydrocading of the declassification of the reservoir.

11. Adjourn

B. Hunter MOVED to adjourn at 9:01PM. N. Faiman SECONDED. All in Favor.

Next meeting July 10, 2019

Respectfully submitted by Michele Decoteau, Land Use Administrator
Approved July 10, 2019



TOWN OF WILTON, NH - PLANNING BOARD

WILTON TOWN HALL • P. O. Box 83 • 42 Main Street • Wilton, NH 03086
ORDINANCE • REGULATIONS • MEETINGS - (Information - Notice - Agendas - Minutes)

51 • Fax: (603) 654-6663

Planning Board E-mail

NOTICE OF DECISION

Authority: RSA 676:3 (Text)

10/24/2016

Project Name: Subdivision for James Kennedy	Case Number: PB-SD01-0116_Kennedy
Plan (Plat) Date (Latest Revision):	Tax Map: F Lot #: 3

MEETING DATE: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied <input checked="" type="checkbox"/> Minutes Attached	APPLICANT(s): James Kennedy 107 Maple Street, Wilton NH Rep: Arthur F. Siciliano 47 Pine Hill Road Weare, NH 03281	APPLICATION TYPE: <input checked="" type="checkbox"/> (SD) Subdivision <input type="checkbox"/> (CR) Cluster <input type="checkbox"/> (SP) Site Plan <input type="checkbox"/> (EX) Excavation <input type="checkbox"/> (HO) Home Occupation <input type="checkbox"/> Sign
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In accordance with RSA 676:3, Issuance of Decision, this document and any attachments serves as written notice in the matter described herein, where the Town of Wilton, NH Planning Board (Board), at a public hearing noticed in accordance with RSA 676:4, Boards Procedures on Plats, has, after consideration of the information before them, voted in the affirmative on a motion to Approve / Deny the application before the Board to:

Subdivide two lots at 539 Isaac Frye Highway, Lot F-3. One lot would be 4.04 acres and the other lot would be 8.85 acres. Both proposed lots are for residential use



The application was approved with the following condition(s) to be completed for final approval:

1. The Declaration of Common Driveway Easement be signed and forwarded with the plan to the Hillsborough County Registry of Deeds
2. Impact Fee language to be added to the plan

The application has been denied for the following reason(s) for the denial:

Jeff Kandt

Chairman, Wilton Planning Board

Attachments:

Approved Minutes from 2-17-16 Planning Board Meeting



TOWN OF WILTON, NH - PLANNING BOARD

WILTON TOWN HALL • P. O. Box 83 • 42 Main Street • Wilton, NH 03086
ORDINANCE • REGULATIONS • MEETINGS - (Information - Notice - Agendas - Minutes)

51 • Fax: (603) 654-6663

Planning Board E-mail

NOTICE OF DECISION

Authority: RSA 676:3 (Text)

10/24/2016

Project Name: Subdivision for James Kennedy	Case Number: PB-SD01-0116_Kennedy
Plan (Plat) Date (Latest Revision):	Tax Map: F Lot #: 3

MEETING DATE: <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied <input checked="" type="checkbox"/> Minutes Attached	APPLICANT(s): James Kennedy 107 Maple Street, Wilton NH Rep: Arthur F. Siciliano 47 Pine Hill Road Weare, NH 03281	APPLICATION TYPE: <input checked="" type="checkbox"/> (SD) Subdivision <input type="checkbox"/> (CR) Cluster <input type="checkbox"/> (SP) Site Plan <input type="checkbox"/> (EX) Excavation <input type="checkbox"/> (HO) Home Occupation <input type="checkbox"/> Sign
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Notice of Decision

Jeff Kandt

Chairman, Wilton Planning Board

Attachments:

Approved Minutes from 2-17-16 Planning Board Meeting

- st
- 5) There is a small amount of wetland on the rear portion of proposed Lot F/ 3-2. What is shown was traced from Plan #38740. There are no wetlands on proposed Lot 3-1, as certified by Arthur F. Siciliano Jr. Sewage Disposal System Designer, Permit #599.
 - 6) State subdivision approval for Lot F/3-1 is eSA2016010602.
 - 7) If the shared driveway point of access on to Isaac Frye Highway is relocated, the owners shall go back to the Planning Board for approval.
 - 8) Any sheds in the building setback shall be moved or removed within 12 months of the approval of thei plan.
 - 9) No gravel or earth materials shall be removed from the site without further Planning Board approval.

"APPROVED BY THE WILTON PLANNING BOARD ON _____ . CERTIFIED BY _____ ,
 CHAIR AND BY _____ ,
 VICE-CHAIR OR DESIGNATED MEMBER"

SUBDIVISION PLAN

Tax Lot F/3
 for

H. James Kennedy

539 Isaac Frye Highway
 Wilton, NH Hillsborough County

EDM & Theodolite Survey
 Control Traverse: 1/10,000+

Scale: 1"=60' December 2015
 Notebook #217 Job #2135

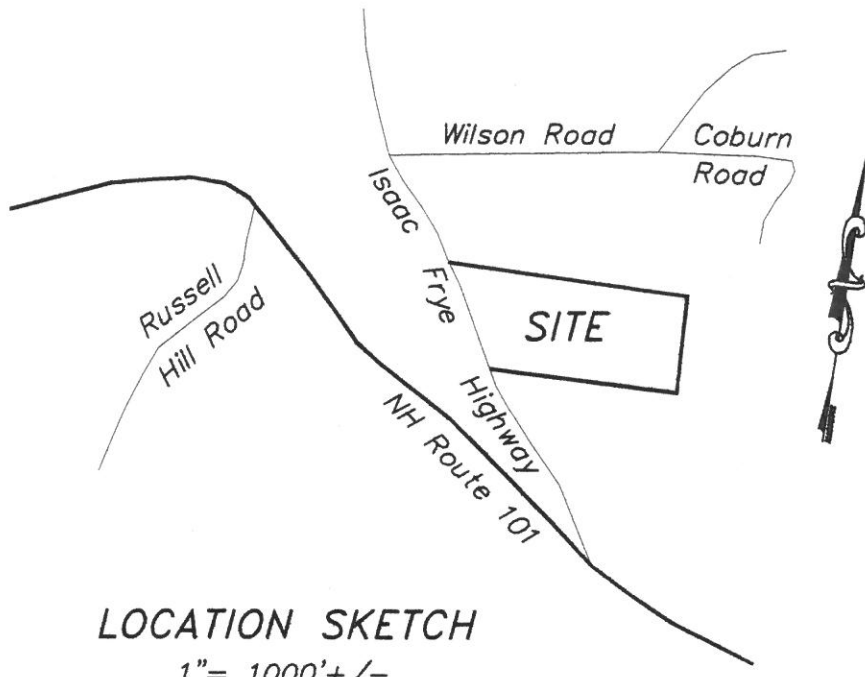
Prepared by:
 ARTHUR F. SICILIANO JR.
 Land Surveyor

Sewage Disposal System Designer
 47 Pine Hill Road, Weare, N.H. 03281
 603-529-2857

PSHIRE
 ner
 Disposal
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 liano Jr.
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 Pollution Control

Notes
 & Plan

LICENSED
 LAND SURVEYOR
 ARTHUR F. SICILIANO JR.
 ME



LOCATION SKETCH
 1" = 1000' +/-

NOTES:

1) Owners of record: Tax Lot F/3
 H. James Kennedy
 107 Maple Street
 P.O. Box 173
 Wilton, NH 03086
 2626/247 4/26/07

2) Zone: Residential/Agricultural
 Area of Tax Lot F/3 prior to subdivision - 12.89 Acres
 This lot is in the Aquifer Protection Overlay District.
 This lot is not in a Flood Hazard Zone as shown on
 F.I.R.M. Map 33011C0434D, effective date Sept. 25, 2009

3) Zoning Requirements:

	Frontage Lots	Back Lots	Provided after subdivision	
			LOT F/3-1	LOT F/3-2
Area	2.0 Acres	5.0 Acres	4.04 Acres	8.85 Acres
Frontage	200.00'	50.00'	506.92'	58.05'

Building Setbacks:
 Frontage Lots: Front 35', Side 35', Rear 35'
 Back Lots: Side 50', Rear 50'
 Wetlands: 25'

4) An easement is reserved on Lot F/3-1. See detail.
 The purpose of the easement is to allow access from
 Isaac Frye Highway to Lot F/3-2 and allow utilities underground
 or overhead to be installed.
 An easement is reserved on Lot F/3-2. See detail.
 The purpose of the easement is to allow access from
 Isaac Frye Highway to Lot F/3-1 and allow utilities underground

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TOWN OF WILTON PLANNING BOARD MEETING MINUTES DRAFT

DATE: January 17, 2007
TIME: 7:30 P.M.
PLACE: Wilton Town Hall Courtroom
PRESENT: Co-Chairman Brian Sullivan, Co-Chairman Andrew Fairbanks, Neil Faiman, Jeff Kandt, Alec MacMartin, Matt Fish, Selectmen's Rep Daniel Donovan, Secretary Carla Walter and NRPC Rep. Steve Wagner
ABSENT: Alternate Member Bill Condra, and Alternate Member David Holder
OTHERS: Barbara Pinnate, James Kukulka, Mark Nelson, Leslie Thigpen, Sam Proctor, Spencer Brooks, Dawn Tuomala, Bill Davidson, Charles McGettigan, James McGettigan, Bob McGettigan, Karl Zhan, Harold Kennedy, Raymond Shea, Peter Bennett, Gail Hoar, David Crane and others.

The AGENDA was as amended as follows:

- **Barbara Pinet** – Erosion and sedimentation control plan for driveway slope disturbance on Lot A-064 Burton Highway per Ordinance Section 14.3.4
- **Subdivision – Barrett Mountain LLC** – Lot E-027 on Rte 31 in the Industrial District. Applicant is proposing to subdivide said lot into four (4) industrial lots.
- **Harold James Kennedy** – Subdivision plan of land for Lot F-003 into two (2) lots
- **John E. Kukulka** – Site Plan Review for Lot F-030-02 on Intervale Road
- **Subdivision – Dorothy S. McGettigan Revocable Trust** – Lot F-102 on McGettigan Road
- **Subdivision – E.J. Abbot Trust** – Lot K-105 on Pine Valley and Maple Streets
- **Subdivision – Martha J. Greene** – Lot B-056 on Curtis Farm Road
- **Subdivision – Don and Dorothy Taylor** – Lots A-058-06 and C-032 on Duggan Road and Bennington Battle Trail
- **Pike Industries** – Sign Application to permit the placement of an off-premises sign for Pike Industries at the corner of Isaac Frye Highway and Forest Road on Lot B-147, 462 Forest Road.
- **Sam Proctor** – Lots D-039 and D-040 – vacant land
- **Adjournment**

Co-Chairman Brian Sullivan called the meeting to order at 7:32 p.m.

- 1.) **Barbara Pinet** – Erosion and sedimentation control plan for driveway slope disturbance on Lot A-064 Burton Highway per Ordinance Section 14.3.4

Barbara Pinet and Leslie Thigpen last appeared before the Board with Bill Davidson, Meridian Engineering on October 18, 2006. At that time the Board asked for revisions to their proposed driveway plan.

Bill explained the driveway is 14' wide and ensured the Board drainage will not be crossing into Mill Brook. He distributed changes of the plans to the Board members

1 noting the road is now tilted to flow towards the East Side vs. the previous plan where the
2 road crowned to the east and west. He also noted a rip/rap swale on the West Side,
3 siltation fences and stone check dams. Furthermore, fertilizer detail has been added to
4 Note 6.

5
6 The Board requested more detail on the stone retaining wall. Discussion took place
7 regarding how this lessens the impact of the driveway construction without getting too
8 close to the adjacent sensitive areas. The Board also requested a small typographical
9 error be fixed on the fill section detail.

10
11 Spencer Brooks stated the Conservation Commission is more satisfied with these plans
12 and asked if the driveway will be paved or gravel. The Board suggested using 1.5" dense
13 pack vs. .75". Bill agreed. The Board decided the plan does not need independent
14 review and would like detail on the plan to be specific in regard to the 1.5" dense pack.
15 Bill stated he believed this would be sufficient to ~~evade~~ erosion issues of a gravel
16 driveway. He concluded gravel driveways are typically graded every three- (3) years,
17 which will also help maintain the driveway.

18
19 The Board asked for abutter comments. There were none.

20
21 **A MOTION was made by Neil Faiman and SECONDED by Dan Donovan to accept**
22 **the plan.**

23 **Alex MacMartin made a MOTION to AMEND the motion to identify the plan as**
24 **Map 4 Lot 64, Barbara Pinet, Erosion Control Plan dated September 25, 2006 and**
25 **revised 1/17/07 and such subsequent plans revised to include the conditions of**
26 **approval. AMENDMENT SECONDED by Dan Donovan.**

27 **Voting: 6 ayes; motion carried.**

28
29 **A MOTION was made by Alex MacMartin and SECONDED by Dan Donovan to**
30 **conditionally approve the above noted plan subject to the detail of the driveway**
31 **construction.**

32 **Voting: 6 ayes; motion carried.**

33
34 The Board asked that the minutes of the meeting be recorded if possible. They also asked
35 for eight (8) copies of the plan be returned to the Town with a Mylar and fees payable to
36 the Town for engineering reviews and Hillsborough County Registry of Deeds for
37 recording of the approval in the amount of \$26.00. This recording ensures if there is a
38 future buyer for this property, they would be aware of the restrictions detailed in the
39 erosion control plan.

40 NRPC fees to be determined.

41
42 Barbara and Bill thanked the Board for their time. There was no further discussion on the
43 matter.

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46

1
2 **2.) Subdivision – Barrett Mountain LLC** – Lot E-027 on Rte 31 in the Industrial
3 District. Applicant is proposing to subdivide said lot into four (4) industrial lots.

4
5 Bill Davidson appeared before the Board for Chad Branson of Meridian who originally
6 presented this application at the November 15, 2006 meeting. He noted LaBombard
7 engineering has given their second review of the subdivision and offered the following
8 revisions:

- 9 1.) Verification the 87ft radius in the cul-de-sac is sufficient for the largest fire
10 vehicle. Also Note 17 on sheets 1 and 2 indicate a road length waiver that was
11 previously granted.
- 12 2.) Retention Basins 1 and 2 were added to the plan.
- 13 3.) Note 18 to include when retention basins are built they shall be built in
14 conjunction with the road construction to avoid confusion later. In addition, an
15 easement is indicated for retention basin 2.
- 16 4.) Exfiltration within the Retention Basins calculations were discussed and agreed
17 upon.
- 18 5.) EPA Notice of Intent was added as Note 9.

19
20 Town Counsel confirmed that the previously existing easements were relinquished. The
21 Board suggested the applicant's attorney draft a warrant article for Town Meeting and the
22 Selectmen's release.

23
24 The Board also stated some sort of "industrial use only" should be stipulated on the plans
25 and to check on the Town Counsel's review of the easements.

26
27 Upon review, the Board asked for the following revisions:

- 28 1.) Plans to note Industrial Use only
- 29 2.) Note 12 to expand on the Site Review regulations.
- 30 3.) Include "pedestrian" in the proposed conservation easement.

31
32 **A MOTION was made by Brian Sullivan and SECONDED by Alex MacMartin to**
33 **continue the hearing to February 21, 2007.**

34 **Voting: 7 ayes; motion carried.**

35
36 Bill thanked the Board for their time. There was no further discussion on the matter.

37
38 **4.) Harold James Kennedy** – Subdivision plan of land for Lot F-003 into two (2)
39 lots

40
41 *Matt Fish stepped off the Board as a voting member at 8:19 p.m.*

42
43 Raymond Shea last appeared before the Board on December 20, 2006 to seek approval for
44 a 2 lot subdivision. The Board stated they had been on a site walk on January 6, 2007.
45 He discussed raising the driveway to reduce a 25' cut to a 17' cut and not removing as
46 much gravel and possibly reconfigured the front and back lots. It was determined that
47 none of these alternatives were a good fit for the applicant. Raymond distributed a traffic

1 study completed during the ZBA application period. He stated Isaac Frye Highway was
2 included in this study.

3
4 **A MOTION was made by Dan Donovan to deny the application due to RSA**
5 **155:E:2A and the exception to permit excavation. The excavation of 90,000 CY of**
6 **material cannot be argued to be found to be exclusively incidental to construction of**
7 **a house.**

8 **This MOTION was NOT SECONDED.**

9
10 **A MOTION was made by Dan Donovan and SECONDED by Alex MacMartin NOT**
11 **to accept the Subdivision Plan of Land for Harold James Kennedy, dated August 28,**
12 **2006 and last revised on November 28, 2006. as it was incidental - to**
13 **Voting: 4 ayes; 2 nays; motion carried. exclusively const**

14 *Jeff, Neil*
15 The Board asked Carla Walter to coordinate a Non-Acceptance Form for the Site Plan
16 Application.

17
18 There was no further discussion on the matter.

19
20 *Matt Fish returned to the Board as a voting member at 8:35 p.m.*

21
22 **4.) John E. Kukulka –Site Plan Review for Lot F-030-02 on Intervale Road**

23
24 *Neil Faiman stepped down as a voting member at 8:36 p.m.*

25
26 Bill Davidson, Meridian Engineering last appeared before the Board on December 20,
27 2006 at which time the Board sought guidance from Town Counsel on the Multi-Family
28 Site Plan.

29
30 The Board informed the applicant that Town Counsel had agreed with the process used to
31 determine the density of for this application. If the applicant disagreed, they would need
32 to petition the ZBA.

33
34 The Board went through the density process again with the applicant, engineers and
35 counsel thus stating their density calculations allowed for two (2) dwelling units.

36
37 **A MOTION was made by Dan Donovan to deny the application for a Multi-Family**
38 **Site Plan, Land of John E. Kukulka, Jr., dated October 20, 2006 and last revised on**
39 **October 24, 2006 for failure to meet the density requirements in the Wilton Zoning**
40 **Ordinance. This MOTION was NOT SECONDED.**

41
42 Attorney Bennett asked for a continuation to the February 21, 2007 meeting in order to
43 ~~defer~~ with this client. *confer* ~~The Board agreed.~~

44
45 **A MOTION was made by Alex MacMartin and SECONDED by Dan Donovan to**
46 **continue the hearing to February 21, 2007**

47 **Voting: 6 ayes; motion carried.**

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Neil Faiman returned to the Board at 8:45 p.m.

5.) Subdivision – Dorothy S. McGettigan Revocable Trust – Lot F-102 on McGettigan Road in the Residential/Agriculture District.

Mike Carter of Robert Todd Engineering appeared before the Board for Robert Todd who originally presented the application on December 20, 2006. He noted they were waiting for Town Counsel’s review of legal language. All other items have been satisfactorily addressed.

Co-Chairman Brian Sullivan read a letter into record from abutter Mark Edwards. The Board agreed it is not the responsibility of the Board to respond to the correspondence and that Mr. Edwards needed to seek legal counsel.

A MOTION was made by Alex MacMartin and SECONDED by Neil Faiman to accept the plan.

Voting: 7 ayes; motion carried.

A MOTION was made by Dan Donovan and SECONDED by Alex MacMartin to continue the hearing to February 21, 2007.

Voting: 7 ayes; motion carried.

Mike thanked the Board for their time. There was no further discussion on the matter.

6.) Subdivision – E.J. Abbot Trust – Lot K-105 on Pine Valley and Maple Streets

Dawn Tuomala presented revised plans originally presented at the January 3, 2007 meeting for the above noted plans. She explained the Brook is now shown in the legend and Mr. Abbot’s shed has detail in Note 10. She also showed that Lot K-105 is now 1 acre so the single family dwelling is eligible to become a multi-family dwelling under the current zoning. The Board concluded that a lot line adjustment that will be made for the shed and garage will not require a new hearing. Neil Faiman offered to walk the bounds again. The Board suggested revising Note 6 and add Note 11 with more detail and include both owners of Lot K-104 and K-105 signatures on the revised plans.

A MOTION was made by Dan Donovan and SECONDED by Neil Faiman to continue the hearing to February 21, 2007.

Voting: 7 ayes; motion carried.

Dawn thanked the Board for their time. There was no further discussion on the matter.

7.) Subdivision – Martha J. Greene – Lot B-056 on Curtis Farm Road

Jeff Kandt stepped down as a voting member at 8:36 p.m.

1
2 Dawn Tuomala presented revised plans requested from the January 3, 2007 meeting of
3 the above noted plans. She explained she has added more detail to Notes 12 and 14; and
4 the EDA was added to the legend.. She also explained other minor revisions the Board
5 had requested. *spell out*

6
7 The Board explained they are still waiting for legal review from Town Counsel. They
8 requested more detail on the northwest corner of Lot B-056-02. Dawn agreed and
9 respectfully asked for a continuation.

10
11 **A MOTION was made by Alex MacMartin and SECONDED by Neil Faiman to**
12 **continue the hearing to February 21, 2007.**

13 **Voting: 6 ayes; motion carried**

14
15 Dawn thanked the Board for their time. There was no further discussion on the matter.

16
17 *Jeff Kandt returned to the Board at 9:21 p.m.*

18
19 **8.) Westview Farms – Subdivision Lot B-25, Lot B-70 and B-70-1**

20
21 Dawn Tuomala appeared before the Board to explain a minor revision to Page 2 of
22 Westview Farms Subdivision Plan dated August 14, 2006 and approved on October 18,
23 2006.

24
25 **A MOTION was made by Alex MacMartin and SECONDED by Dan Donovan to**
26 **approve the revision to Page 2 of West View Farms, LLC Lot B-025 Christine**
27 **Tiedermann, Scott Tiedermann dated August 14, 2006.**

28 **Voting: 7 ayes; motion carried.**

29
30 Dawn thanked the Board for their time. There was no further discussion on the matter.

31
32 **9.) Subdivision – Don and Dorothy Taylor – Lots A-058-06 and C-032 on Duggan**
33 **Road and Bennington Battle Trail**

34
35 Co-Chairman read the public notice into record.

36
37 Dawn Tuomala appeared before the Board with a proposal for a lot line adjustment
38 between A-056-06 (56.405 acres) and C-032 (9.719 acres), whereas Parcel "A" (1.405
39 acres) will be transferred to Lot C-032. Lot A-056-06 becomes 55 acres and Lot C-032
40 becomes 11.124 acres. A well easement and well and water rights exist on Lot A-056-06.

41
42 Dawn respectfully requested the following waivers:

- 43 1. 6.2 e Locations of existing septic system leach fields within 100 feet of property lines
- 44 2. 6.3 c Area of proposed lots; wet, dray and total. Waiver is for wet and dry areas.
- 45 3. 6.3 d Existing and proposed topography
- 46 4. 6.3 f Soil boundaries and types
- 47 5. 6.3 g High intensity soil survey

Review a surveying error as to the width of the town road & result in fringeage affecting other lots

- 1 6. 5.3 h Locations of all water bodies, watercourses, wetlands, rock/ledge outcrops or
- 2 other significant natural features.
- 3 7. 6.3 m Locations of existing and proposed utility lines
- 4 8. 6.3 g Proposed driveway locations

5
6 Due to the large number of waivers, the Board stated they are not confirming anything
7 but outlines (such as a buildable lot) and ask this be noted on the plans. Dawn agreed.

8 boundaries ~~mark~~ as a result of the
9 Jeff Kandt offered to walk the bounds. *waivers state is no*

*representative
the lot
is
buildable*

10
11 **A MOTION was made by Neil Faiman and SECONDED by Dan Donovan to accept
12 the waivers.**

13 **Voting: 7 ayes; motion carried.**

14
15 **A MOTION was made by Alex MacMartin and SECONDED by Dan Donovan to
16 accept the plan.**

17 **Voting: 7 ayes; motion carried.**

18
19 Dawn requested a continuance to the February 21, 2007 to revise the plans.

20
21 **A MOTION was made by Dan Donovan and SECONDED by Alex MacMartin to
22 continue the hearing to February 21, 2007.**

23 **Voting: 7 ayes; motion carried.**

24
25 Dawn thanked the Board for their time. There was no further discussion on the matter.

26
27 10.) **Sign Application - Pike Industries** – placement of an off-premises sign at the
28 corner of Isaac Frye Highway and Forest Road on Lot B-147, 462 Forest Road.

29
30 Mark Nelson appeared before the Board with a sign application. He explained he had
31 received a variance from the ZBA on December 12, 2006, which reads as follows:

32
33 *The variances will permit the placement of an off-premises sign for Pike Industries at the corner
34 of Isaac Frye Highway and Forest Road on Lot B-147, 462 Forest Road. They are granted
35 subject to the following restrictions:*

- 36 1.) *The sign is not to be illuminated;*
- 37 2.) *The sign is to be no more than six feet high;*
- 38 3.) *The area of the sign is to be no more than nine square feet per face;*
- 39 4.) *The sign will be placed no less than 13' from the white line of the pavement;*
- 40 5.) *The Wilton Police are to confirm that the location of the sign is the location that they
41 approved in their letter to the Zoning Board and;*
- 42 6.) *The appearance of the sign is to be generally consistent with the appearance of the
43 design that was proposed to the Board.*

44
45 *This decision shall expire if the construction or use permitted by it has not begun by Friday,
46 December 12, 2008.*

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The Board asked for comments from the public. Elmer Santaniello appeared and requested the Board members go to the site and physically look at the location of the sign. He states there is a potential safety issue and the location shown to the Police for the Zoning hearing was not correctly shown.

errie

The Board discussed if the sign is being permitted to be placed on property that the Board has jurisdiction to approve or deny.

Mark stated the State Right of Way is 35 feet from the centerline. He also noted he does not have an issue with moving the sign this distance. The ~~current~~ cone which is the visible marker for the public to see is 13 feet from the white line, ~~10 feet back~~.

marks the proposed sign location

The Board decided to drive by the site and continue the meeting to February 21, 2007.

A MOTION was made by Alex MacMartin and SECONDED by Andrew Fairbanks to continue the hearing to February 21, 2007.
Voting: 7 ayes; motion carried.

11.) Sam Proctor – Lots D-039 and D-040 – vacant land

Mr. Sam Proctor appeared before the Board to discuss two pieces of vacant land, specifically Lots D-040 and D-039 owned by the Babineau 97 Irrevocable Trust on Holt Road. He explained he sought the advice of the ZBA for septic system inside the setback however the ZBA suggested he approach the Planning Board for their input.

The Board did not if they could take non-conforming lots and allow them to remain non-conforming. Alex MacMartin offered to contact Town Counsel to see which of the 3 approaches would be most suitable.

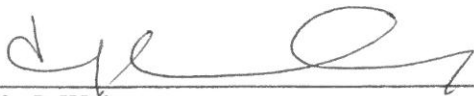
know

Sam thanked the Board for their time. There was no further discussion on the matter.

12.) Adjournment

A MOTION was made by Alex MacMartin and SECONDED by Neil Faiman to adjourn the meeting at 10:33 p.m.
Voting: 7 ayes; motion carried.

Minutes respectfully submitted by:


Carla J. Walter

TOWN OF WILTON

PLANNING BOARD OFFICIAL NOTIFICATION OF SITE PLAN APPLICATION ACTION

Plan File No.: F-003 Street Address: Isaac Fryc Highway
Applicant: Harold James Kennedy Map/Lot No: F-003

- (X) Subdivision Site Plan Review Application
() Lot Line Adjustment
() Cluster Site Plan Review Application
() Non-residential Site Plan Review Application
() Home Occupation
() Erosion Control Plan

APPLICATION ACCEPTANCE

() Has been accepted by the Wilton Planning Board on ... Conditions for acceptance set by the board, based on the Town of Wilton's Land Use Laws and Regulations, are as follows:

(X) Has not been accepted by the Wilton Planning Board on January 17, 2007. A decision for non-acceptance has been rendered for the following reasons of non-conformance with the Town of Wilton's Land Use Laws and Regulations:

- 1. Based on exceptions in RSA 155:E:2A, the proposed excavation activity is deemed to not be "exclusively incidental" to the subdivision application.

APPLICATION APPROVAL

() Has been granted by the Wilton Planning Board on ... Conditions for approval set by the board, based on the Town of Wilton's Land Use Laws and Regulations, are as follows:

Notice of Decision

() Has been denied by the Wilton Planning Board on ... A decision for denial has been rendered for the following reasons of non-conformance with the Town of Wilton's Land Use Laws and Regulations:

SIGNED: [Signature] DATE: 1/23/07
CHAIRMAN, WILTON PLANNING BOARD



Town of Wilton, NH Zoning Board of Adjustment

Decision notices posted at this web site have not been checked for consistency with the printed decision notices that are available in the Wilton Town Offices. If you need the definitive text of a decision, please obtain the printed notice from the town offices.

Case 5/9/06-2

Tuesday, May 9, 2006 — Notice

K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) have applied for variances to Sections **4.1**, **6.1**, **9B.2**, **9B.6.1**, and **9B.6.2** of the Wilton Zoning Ordinance to permit the removal of gravel from Lot F-3, 536 Isaac Frye Highway. The requested variances would permit the excavation of gravel in a district where that is not a permitted use, would reduce the setbacks required by the ordinance, and would allow the excavated material to be removed by way of Isaac Frye Highway.

The Town of Wilton Zoning Board of Adjustment will consider this application in a public hearing in the Wilton Town Hall Courtroom on Tuesday, May 9, 2006 at 7:30 p.m.

The application for this case, and any other documents submitted with it, are available for inspection in the Wilton Town Offices.

Tuesday, May 9, 2006 — Continuation

The hearing on the application by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) for variances to Sections **9B.6.1** and **9B.6.2** of the Wilton Zoning Ordinance has been continued to the June 13 meeting of the Board. If granted, the variances would permit the removal of gravel from Lot F-3, 536 Isaac Frye Highway. The requested variances are necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance. The applicant was also advised that the application should be resubmitted to request a variance to Section **9B.2** of the Ordinance as well as sections 9B.6.1 and 9B.6.2.

Minutes of the hearing.

Sunday, June 11, 2006 — Site Visit

ZBA
OVERVIEW

Notice is hereby given that the Town of Wilton Zoning Board of Adjustment will meet on Sunday, June 11, 2006 at 10:00 a.m. at Lot F-3, 536 Isaac Frye Highway, to hold a site visit for Case #5/9/06-2, the application of K.M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) to remove gravel from the property.

The site visit is a meeting of the Board, and is open to the public. Its purpose is to assist the Board members and other interested parties to become familiar with the property involved in the application. Board members and other interested parties may, through the Board chairperson, ask questions about, and the applicant may point out, site details pertaining to the application, such as boundaries, contours, proposed buffers, driveways, etc. No other testimony will be taken, and no other discussion should occur.

Tuesday, June 13, 2006 — Continuation

The hearing on the application by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) for variances to Sections **4.1**, **6.1**, **9B.2**, **9B.6.1**, and **9B.6.2** of the Wilton Zoning Ordinance has been continued to the Monday, June 19 meeting of the Zoning Board. If granted, the variances would permit the removal of gravel from Lot F-3, 536 Isaac Frye Highway. The requested variances are necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance.

The Board intends to hear testimony and arguments in the case from 7:30 to 9:00 p.m., and then to close the public hearing on the application. Depending on the other cases to be heard that evening, the Board may conduct deliberations on the case later in the meeting, or at a subsequent meeting.

Minutes of the hearing.

Monday, June 19, 2006 – Continuation

The hearing on the application by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) for variances to Sections **4.1**, **6.1**, **9B.2**, **9B.6.1**, and **9B.6.2** of the Wilton Zoning Ordinance has been continued to the Monday, June 26 meeting of the Zoning Board. If granted, the variances would permit the removal of gravel from Lot F-3, 536 Isaac Frye Highway. The requested variances are necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance.

Minutes of the hearing.

Monday, June 26, 2006 – Continuation

The application by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) for a USE variance to Section **4.1** of the Wilton Zoning Ordinance was denied on June 26, 2006 by a 3 to 1 vote. If granted, the variance to Section **4.1** would have permitted the removal of gravel from Lot F-3, 536 Isaac Frye Highway, a lot that is not in the district in which gravel excavation is permitted. Since the USE variance has been denied, the Board found that the variances that are subordinate to it, Sections **6.1**, **9B.2**, **9B.6.1**, and **9B.6.2**, are moot.

In the motion to deny the variance for Section **4.1**, The Zoning Board cited:

- Granting the variance would be contrary to the public interest because of the overwhelming opposition to the proposal in the neighborhood and for traffic and safety concerns exiting Isaac Frye Highway onto Route 101.
- The use contemplated by the petitioner as a result of obtaining the variance would be contrary to the spirit of the ordinance because the new ordinance proposing a gravel excavation district has overwhelming support of the public as adopted and to restrict where these operations occur.

This case is continued to Tuesday, July 11, 2006 at 7:30 PM in the Town Hall Courtroom when the Zoning Board will adopt Findings of Fact / Statement of Reasons for denial of the variance requests and issue a Final Notice of Decision in this matter.

Minutes of the hearing.

Tuesday, July 11, 2006 – Continuation

The Zoning Board's meeting to adopt Findings of Fact / Statement of Reasons for denial of the variance requests by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner), and to issue a Final Notice of Decision in this matter, has been continued to Tuesday, July 18. The requested variances to Sections **4.1**, **6.1**, **9B.2**, **9B.6.1**, and **9B.6.2** of the Wilton Zoning Ordinance, if granted, would have permitted the removal of gravel from Lot F-3, 536 Isaac Frye Highway. They were necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance.

Tuesday, July 18, 2006 – Decision

The application by K. M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) for a USE variance to Section 4.1 of the Wilton Zoning Ordinance was denied on June 26, 2006 by a 3 to 1 vote. If granted, the variance to Section 4.1 would have permitted the removal of gravel from Lot F-3, 536 Isaac Frye Highway, a lot that is not in the district in which gravel excavation is permitted. Since the USE variance was denied, the Board found that the variances subordinate to it, Sections 6.1, 9B.2, 9B.6.1, and 9B.6.2, are moot.

In the motion to deny the variance for Section 4.1, The Zoning Board cited:

- Granting the variance would be contrary to the public interest because of the overwhelming opposition to the proposal in the neighborhood and for traffic and safety concerns exiting Isaac Frye Highway onto Route 101.
- The use contemplated by the petitioner as a result of obtaining the variance would be contrary to the spirit of the ordinance because the new ordinance proposing a gravel excavation district has overwhelming support of the public as adopted and to restrict where these operations occur.

On July 18, 2006 the Board adopted its Findings of Fact and issued a Statement of Reasons for denial of the variance requests.

In addition to the above, The Board determined that:

- A. The change to Section 4.1 and the accompanying new section of the ordinance establishing a gravel excavation district were enacted to restrict where these operations occur, as spelled out in the ordinance itself, where it describes the purpose of the district being to maintain “a safe, healthy and harmonious atmosphere for all in the Town of Wilton” and “minimize the detrimental effect of excavations on the visual character” of the town (Wilton Zoning Ordinance 9B.1, p. A-37).
- B. PROPERTY VALUES: The Board did not find substantial evidence to support any effect on property values.
- C. HARDSHIP: The Board did not find anything unique about the property or its environment to warrant a hardship; proximity to a district is not a hardship nor is it a reason to be part of the district; and present zoning restriction does not interfere with reasonable use of the property.
- D. SUBSTANTIAL JUSTICE: The Board did not find that Substantial Justice would be done because an injustice must be capable of relief by the granting of a variance that meets the other qualifications.

The selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing of this decision. A request for a rehearing must be filed in writing with the Zoning Board of Adjustment on or before Thursday, August 17, 2006, and must fully specify all grounds on which the rehearing is requested. (N.H. RSA 677:2)



Town of Wilton, NH Zoning Board Minutes

Minutes posted at this web site have not been checked for consistency with the printed minutes that are available in the Wilton Town Offices. If you need the definitive minutes of a ZBA meeting, please obtain the printed minutes from the town offices.

May 9, 2006

- Voting Board** Chairperson Neil Faiman; members Joanna Eckstrom, Carol Roberts, Jim Tuttle and Bob Spear; alternate member Eric Fowler.
- Agenda** John Zavgren & Bridget Mooney – special exception
K.M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) – variances
William Jordan and Linda Bravo and Keith Frolkey – variances

Faiman called the meeting to order at 7:45 p.m., announced the three cases and introduced the board members.

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Motion Tuttle/Spear to approve 4/11/06 minutes as printed. Five in favor, Eckstrom abstained.

Faiman introduced the Board members, the case, and the procedures.

Case #5/9/06-1 – ZAVGREN/MOONEY

John Zavgren and Bridget Mooney have applied for a special exception under the terms of Section 5.3.1 of the Wilton Zoning Ordinance, to permit the use of Lot C – 136, 16 West End Highway, for a wedding venue business.

Faiman noted that the five regular board members would be voting on this case.

John Zavgren handed out information sheets and posted an architectural drawing of the portion of his property where he proposes to be able to park 100 cars. On the small locus map he indicated the parking area in green and the picnic area, where the weddings will actually take place, in blue. His proposed hours of operation are 10 a.m. to 11 p.m. Saturday and Sunday mid May to the end of September. He said that the wedding venue is more than 200' from the nearest abutter and that the terrain and the trees will attenuate the sound. He will provide portable toilets and outdoor sinks. He is proposing to extensively landscape the proposed parking area, which will be maintained as grass. He said that the wedding venue itself is not visible from the street. He said that he and his family are proposing only to rent out the property and supervise the events, they will not provide food or sound or anything for the weddings.

Eckstrom asked if there would be any lighting? He said he will install landscape lights, which will be 3' on the ground and pointing down, that will go from the picnic area to the parking lot. She asked if he would be on site for every event, he said that he would. She asked if he would be employing the parking attendant, he said he would and it would usually be him. Roberts asked if he was flexible on the Sunday night hours of operation and willing to end any sooner than 11 p.m. He said he was.

Ann Carlsmith, Bennington Battle Trail, suggested hiring the Police if necessary for overflow parking. Mr. Zavgren said they don't plan on having any overflow parking, but if the board feels the Police might be needed to direct traffic when people leave, he would do whatever the board feels is necessary.

Abutter Judy Grace, 89 Temple Road, Lot C – 141, said she feels that if this proposal is granted, for her it will be like living next to a state park. The peace, quiet and privacy she moved to Wilton for will no longer exist. Instead she will hear music and see people running around and slamming car doors from 10 a.m. until 11 at night. She also felt the proposal would hurt her property value. She said her property abuts the brook, as does his. She had

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a concern about liability, should a child get injured in the brook or come onto her property. She also had a concern about overuse of West End Road, a very narrow road. In summary she felt the property is too small for this proposal.

Abutter Joseph Roberge, owns Lot C – 137, 10 West End Highway, lives in CT. He wanted to know if the applicant was going to get a liquor license, he was concerned about his property value and concerned about his well becoming contaminated from the portable toilets, he wanted to know how many there would be. He said that the driveway from the proposed parking area down to West End Highway is pitch black. At the end are two granite posts four or five feet high, and his house is right next to one of the posts. He was concerned that people consuming too much alcohol may hit the posts or his house. He would like to see lighting all the way down to the main road and also policed for the two-drink minimum (.08) if that's possible.

Abutter Wayne Nichols, Lot C – 140, 77 Temple Road, said he lives at the bottom, down near the brook and can see the Zavgren house from his property, He said he moved to West Wilton from downtown Wilton for the peace and quiet there. He said his only day off is Sunday and if this proposal is granted, he will sit in the yard and listen to a bunch of noise instead of the peace and quiet that he looks forward to all week.

Faiman read a letter from abutter Nancy Clark, Lot C – 123, 7 West End Road, dated May 8, 2006, wherein she stated her support for granting the special exception.

Mr. Zavgren answered questions that had been raised. He said the portable toilets are self-contained units and nothing goes into the ground, so he couldn't see how they could contaminate a well. He said they would be rented for each event and picked up after each event. He wasn't sure exactly where they would be placed, but he thought they would be closer to the parking lot than the picnic area. He said he would not be providing alcohol, so would not get a liquor license. He said that caterers or bartenders that the wedding couple may hire could have a liquor license. Spear asked if he was aware of the new liability law. Zavgren said that he was.

Eckstrom asked if he had done a traffic study as to the number of cars that go around the Temple Road/West End Road Corner. Mr. Zavgren said he has read traffic counts on the internet but he didn't bring them with him.

Tuttle asked about the waterfall and brook area as far as liability – was the applicant going to provide any ropes or restraints of any kind. Mr. Zavgren said that he has young children that play in that area quite vigorously and there have never been any problems. He said that the water in those areas is rather shallow – a child could slip and get bruised but not drown in the waterfall. He said the water in the brook is 3' – 4' deep. Eckstrom said that a child can drown in a bathtub in less than 6" of water. He said that he probably made an overstatement there, but he said that he wasn't very concerned about those safety issues.

In response to Mr. Roberge's question about the 200' distance, Mr. Zavgren said he meant that the picnic area was at least 200' from all abutters.

Roberts asked about the state of the proposed parking area at present. Mr. Zavgren said he cut down most of the trees a few years ago and none of the landscaping has been started. Eckstrom said she drove by the property and felt that she would benefit from a site visit.

Ms. Carlsmith asked that the board ask the applicant to come back with a more complete plan.

Ms. Grace asked how the applicant would keep guests from coming onto her property. Mr. Zavgren said that the brook would serve as a natural boundary, and he didn't think there was an attraction on her property that would draw guests to it, but if it happened, he would find a way to deal with it.

Spencer Brookes, Wilton Cons Com, asked the board, if they do have a site visit, to observe the location of the brook. He said that keeping the shore covered with trees keeps the brook cool, which is healthy for the Souhegan river downstream.

Tenant of Lot C – 137, 10 West End Highway, Henriette Isene, said she is most concerned with the noise and the exhaust from all of the cars.

Dennis Orsi, Isaac Frye Highway, said that if the board approves this, it should require some kind of study to find out how many portable toilets are needed for 200 beer drinkers on a hot summer day, so that there will be enough.

Andy Hoar, Isaac Frye Highway, observed that the applicant said the brook should keep people from trespassing on abutting properties, but he also said it was so shallow that you couldn't drown in it. He said it just seems like the details have not been thought through.

Keith Frolkey, Pleasant Street, said that the applicant hadn't mentioned lighting at the picnic area itself and that coolers and DJs etc. would probably require a generator. Mr. Zavgren answered that they actually hosted a wedding for friends last fall and used a 20 amp circuit which worked fine.

Board members decided to schedule a site visit for Monday, June 12, 2006 at 6:30 p.m. at the Zavgren/Mooney property, 16 West End Highway. Faيمان explained that the site visit is open to the public but is not part of the public hearing, and no testimony or discussion will occur.

Board members also asked the applicant to have marked, before the site visit, the parking area, driveway, venue site, and where the toilets and lighting will be. For the next meeting, board members asked the applicant to bring information on traffic studies on Temple Road/West End Highway, the Host Responsibility Law, an emergency vehicle access plan and paid security.

Motion Spear/Eckstrom to schedule a site visit on Monday, June 12th at 6:30 p.m. at the Zavgren/Mooney property, and to continue the hearing to Tuesday, June 13th at 7:30 p.m.

Case #5/9/-6 – 3 JORDAN/BRAVO/FROLKEY

William A. Jordan and Linda J. Bravo (Lot J-84), and Keith A. Frolkey (Lot J-85) have applied for variances to Sections 17.1 (c), 6.2.3, and 6.2.4 of the Wilton Zoning Ordinance, to permit an adjustment of the lot line between Lot J – 84, 17 Pleasant Street, and Lot J – 85, 19 Pleasant Street. The variances are necessary because both lots are nonconforming with respect to frontage and setbacks, and would continue to be nonconforming after the adjustment.

The five regular board members voted on this case.

Dawn Tuomala, with Monadnock Survey, represented the owners and explained they are presently making application also to the Planning Board for a lot line adjustment between Lots J – 84 and J – 85. They would like to adjust the line between them by 498 square feet. The area shaded in green, on the plat, came from Lot J – 85 and will go to J – 84, and the area in yellow came from Lot J – 84 and will go to J – 85. The lot areas will remain exactly the same as they are now. The existing driveway on J – 84 is actually partially on J – 85. Both lots are nonconforming lots. The zoning district is Res/Ag – you need 2 acres, 200' of frontage and 35' setbacks. It's also partially in the Aquifer Protection District. J – 84 has frontage of 59.65' right now and it will have 70.2' after the adjustment. Lot J – 85 has a frontage of 129.03' at present and will have 118.48' after the adjustment.

They are asking a variance from 17.1 (c) nonconforming uses. They would like to adjust the lot lines between the two lots. For the variance to 6.2.3 frontage – they would like to be allowed 118.48' on Lot J – 85. For the variance from 6.2.4 setbacks, they would like to be allowed a setback of 11' on Lot J – 85. She then read through the variance criteria. (See application in file).

Abutter Kyra Brennan, Lot J – 83, 11 Pleasant Street, wanted to know if granting these variances would allow the owners of Lot J – 84 to have a two-family dwelling. Ms. Tuomala said that these variances only allow for a lot line adjustment between the two lots, and for Lot J – 85 to have slightly less frontage and setback on one side than it had before the adjustment. She said Lot J – 84 will pick up 10 extra feet of frontage, but that's not near the 200' needed.

Matthew Cabana, Temple Road, said he was the realtor for the sale of J – 84 and is familiar with the property and felt that cleaning up the lot lines will be a good thing for both properties.

Eckstrom asked if this adjustment will allow for trash receptacles to be set back into the property rather than jutting out into the road. Linda Bravo answered that the driveway currently belongs to J – 85. After the adjustment it will belong to them and they will have more room for rubbish bins etc.

Tuttle asked Mr. Cabana how a sale could go through with the driveway of one property actually on the deed of the property next door. Mr. Cabana said that it happens quite frequently on older properties. Ms. Tuomala added that there was no survey until this one was done.

Faiman said a key statement from the application is there is nothing to be gained by denying it. He added that it simplifies the lot lines and regularizes the property somewhat. It doesn't make anything possible that wouldn't have been possible before.

Motion Roberts/Spear to grant the variances for the reasons stated in the application. Four were in favor. Tuttle voted no.

Faiman explained that the bylaws call for the meeting to end at 10:30 p.m. unless there is a unanimous vote by the board to extend it. He then announced the next case:

Case #5/9/06-2 — ZAHN/KENNEDY

K.M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) have applied for variances to Sections 9B.6.1 and 9B.6.2 of the Wilton Zoning Ordinance to permit the removal of gravel from

Lot F – 3, 536 Isaac Frye Highway. The requested variances are necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance.

Faiman then announced that he would recuse himself from the case because of his involvement in the drafting and passage of the gravel ordinance as a member of the planning Board within the last couple of months. He said this does not necessarily mean that he will always recuse himself from future cases involving this particular ordinance, but given the proximity to a fairly tight, hotly contested campaign on the issue, he thought it would be appropriate to step down. He reserved his right to speak as a private citizen from the audience. Roberts also recused herself and reserved the right to speak as a private citizen from the audience. Faiman appointed alternate member Eric Fowler to take Roberts' place and said that Vice Chair Joanna Eckstrom would be chairing the hearing in his place.

Eckstrom explained that there would only be a four-member board and gave the applicant the choice of waiting in hopes of convening a five-member board. The applicant chose to go ahead. She explained that the procedure for the hearing would be that the applicant would present the application; anyone in the audience in favor of the project could speak; then anyone in the audience opposed to the project could speak.

Attorney Gerald Prunier explained that this property is on Isaac Frye Highway, about 800' from Route 101 and is comprised of 12+ acres. It is bordered by the New England Forestry Foundation property on the west, the Anne Jackson Memorial Girl Scout Camp on the north and east and the Town of Wilton/South Yard Cemetery on the south. He said there is a large hill on the property that must be altered to allow for residential use and his clients would like to remove gravel down to a level 210 as shown on the plan that he posted on the wall. He said his clients are before the board because the Town, at its last meeting, passed an ordinance that left them on the wrong side of Route 101, as far as removing gravel is concerned. They are proposing to remove the gravel with conditions that the trucks will enter from Route 101 and return to 101, but they will use 800' of Isaac Frye Highway to get to and from 101. He said there would be 8 trucks making 4 trips each which would total 32 trips a day. Hours of operation would be 7 a.m. to 4:30 p.m. M – F. He said there might be some reclamation done on Saturday but there wouldn't be any removal of gravel on those two days.

They feel that it is a reasonable use of the property, and in relation to the ordinance, they feel that they are so close to it that it should be considered. They are requesting the variance to the 300' buffer requirement from all lot lines because the property is only 500' wide. They are proposing 50' buffers around the whole property or the ridgeline.

Spear asked how long the operation would take, including reclamation, and what is planned for the property after it has been completed. Atty Prunier said the gravel removal would take about 8 years and the plan is for residential housing.

Eckstrom asked about noise, blasting etc. Karl Zahn said there will be no blasting, regardless of whether they hit ledge. The equipment they would use is a loader to load the trucks, a dozer part-time, and a screener a few days a year. He said the way the operation would work is that the trucks would be loaded first thing in the morning and then they would be gone for three hours, they would come back, get loaded again, and be gone for another three hours. During those three hours, he said, not much is going on.

Spear asked about the contours. Zahn said their goal is to end up with a field that will actually grow crops and that is at about the same level as the Kennedy house. He said the sloping ratios are more gentle than what the Town or State requires. In response to a question, he said all the materials for reclamation are on site, including 12" of loam.

Ralph Jelenick, Properties Administrator for the Swiftwater Girl Scout Council, Bedford, NH, said the abutting property is Camp Anne Jackson on Wilson Road, which the Council owns. He said there are two main areas of the camp: The upper area is the Lodge area which is used all year around. The eastern area is the lower camp which consists of Adirondack shelters, consult composting toilets, a pavilion, and a pond. This area is primarily used in the spring, summer and early fall. He said he did a walk-through of the property with Tracy Gillick, Operational Vice President for Property Management at the Council, and the principals of the project. At that time they found five areas of concern:

- safety – one of the trails in particular, on the eastern side of the project, goes almost right up to it. The applicants told Jelenick they would provide both fencing and signs to keep kids from going onto the property.
- noise – 10 or 11 months out of the year the troops use the site only on weekends, but they run a day camp during the month of July. The applicants told Jelenick that they would be willing to stop operations during special events on the eastern part of the property or during overnights.
- erosion control – because the pond is so close to the site they wanted to be sure that there was professional oversight so that no silt went into the pond. He said the applicants assured him that this would be done.
- groundwater disruption – he said this was not discussed but is something that must be discussed. He didn't know if the groundwater table has been mapped, where it or they are, how deep they are etc. He said they have two wells: one is near the lodge and the other is on the far side of the pond. There has never been a problem with the water, they have it tested twice a year in compliance with State requirements. He felt a Hydrologist would need to be hired to find out if this project would affect the water tables, which could affect their wells, and their wells would have to be monitored throughout the life of the project to be sure they are not being damaged.
- Site reclamation – they were assured that the site would be reclaimed in a field-like setting with bonding materials to assure that there would be no runoff or erosion.

After the site visit and discussion, he met with the Council CEO. She took it to the Board of Directors, who decided not to support or oppose the application, as long as the applicants hold to the agreements they made.

Spear asked him if he was happy with the plan for how it will look after the operation. He said yes, because it has been logged and it looks pretty bad right now and will for a number of years, it's also dangerous if kids do get down on the property because of the rocks and general upheaval.

Paul Buffam, 618 Isaac Frye Highway, said that he voted for an ordinance at Town Meeting, which was that gravel and sand excavation were supposed to be done in another part of town, not in this zone. And what the applicant is looking for is a variance so they can do graveling in this particular area. He said he understood that with a variance you have to prove there is some hardship with your land and he hadn't heard anything about a hardship on this particular parcel of land. He said it seemed to him if you were surrounded by other pre-existing gravel pits and you couldn't have a house there or something else, then that would be a hardship, but this is just a regular house lot or piece of property in Wilton. And, he said, there's a lot of land in Wilton just like this, so if the Board grants this variance, there are a lot of gravel companies around here with their eyes on Wilton gravel and sand, what is going to distinguish any other lot from this lot? He said it looks like a can of worms to him.

Eckstrom read the hardship criteria that Attorney Prunier had written in the application. Then she said that the way to do an excavation, anywhere in town other than the new Gravel Excavation District, is by making an application to the Zoning Board. Buffam said the question remains what makes this lot different than any other residential lot that may come before the board with the same request? Eckstrom responded that each case is treated individually. Buffam said that if this variance is granted, a precedent will be set which will essentially throw the Gravel Excavation District ordinance out the window.

Eckstrom read a letter, dated May 8, 2006, from the Wilton Board of Cemetery Trustees with reference to the South Yard Cemetery abutting Lot F – 3. In it the Board asks that should an area variance be granted, the buffer not be reduced beyond one hundred and fifty feet. It notes that the natural, undisturbed wooded buffer required under Section 9B.6.1 of the ordinance has already been cut and the Trustees have determined that allowing excavation to intrude further into the buffer would adversely affect the tranquility of the cemetery. (See file)

Jim Nelson, Board of Cemetery Trustees Chair, said that he walked the area near the stone wall with the applicants and discussed with them the need for the 150' buffer.

Eckstrom read letters from neighbors who had no objection to the gravel operation:

Carolyn Quinn, Lot F – 001, dated May 8, 2006

William Beard, Wilson Road, dated May 5, 2006

Isaac Blanchard, 220 Wilson Road, dated May 8, 2006

Winifred R. Blanchard, 221 Wilson Road, dated May 8, 2006

Wendy Blanchard, 221 Wilson Road, dated May 8, 2006

Clint Wilder, 100 Wilson Road, dated May 8, 2006

Heidi G. Wilder, 100 Wilson Road, dated May 8, 2006

Eckstrom read a letter dated May 5, 2006 from David Deysher, owner of Historic and Distinctive Properties, 74 Stagecoach Road wherein he says, in part, that Wilton Center is one of the most beautiful and picturesque spots in southern NH. Should this variance be granted, he writes, the Gateway to Wilton Center as you drive up Isaac Frye Highway will be an absolute eyesore and will be viewed as a reason not to live in Wilton Center. He also says he can't imagine heavy truck traffic coming up Isaac Frye into Wilton Center, the road will quickly be destroyed. (See file)

Bill Carnduff, 195 Wilson Road, said he is directly across the street from the Anne Jackson Lodge and he is, in fact, one of the people that Mr. Deysher sold a house to in Wilton Center. He said he is, to put it mildly, highly distressed by the possibility that the will of the people, as expressed at the March election in Wilton, could be overturned at the very first moment by an application for a variance being successful. He said the will of the people was to contain willy nilly gravelling to a certain area of town that already has gravelling operations. He asked for a show of hands of people who were not in favor of this project and who lived within 300 yards of it. There were about 10 people. Then he asked how many lived within 750 yards and an additional 12 went up. He spoke about safety – the poor visibility at the bottom of Isaac Frye Highway for making left turns onto Route 101; trucks – 32 truck trips a day on a road not meant to take heavy truck traffic; environment – water tables in the area should be studied to see if they will be involved; peace & quiet – he said he can already hear beeping from gravel pits on Route 31, he does not want to hear loaders at 7 a.m. 300 yards away, In closing, he said he thought it would be a bad precedent to give the very first applicant for a variance, after a vigorously fought zoning ordinance, a free pass. He said it would open the ZBA up to some serious incursions from anyone else in town who would like relief from that same zoning ordinance. That zoning ordinance is there because the will of the Town wanted it there and does not want a gravelling operation on Isaac Frye Highway.

Neil Faiman, 24 Putnam Hill Road, pointed out that the applicant only applied for 9B.6.1 Setbacks and Buffers and 9B.6.2 Transportation but did not apply for 9B.2 District Location. Atty Prunier said he was willing to do whatever was required. Eckstrom asked Faiman what the protocol was and Faiman said the applicant needed to fill out a new application, pay the application fee, submit abutter labels and pay those fees.

Gail Hoar, 578 Isaac Frye Highway, said she lives 300 yards from the proposed operation and is concerned about reclamation, among other things. Tuttle said that the Planning Board requires a reclamation plan and that it be bonded. She said we are opening ourselves up to a future of lawsuits if we allow gravelling on this piece of property because variances will be demanded on every other piece that comes up.

Spencer Brookes, Wilton Cons Com, wanted to speak on two issues:

- Wells on the Girl Scout property – they are considered, by the State of NH, to be public wells, like the wells at High Mowing and Pine Hill Schools. Those are the only public wells in Wilton that he was aware of. Tuttle said excuse me twice, trying to interrupt. Brookes said public wells are defined as wells that serve five houses or more or institutions. They are not municipal wells. So these two wells at the Girl Scout Camp are available for protection through NHDES.
- Character of the town – the reason the town voted to have gravel pits limited in this community is that we want to keep the character of our town. This board must take very careful consideration of the town vote.

To rescind a vote of the townspeople is a serious consideration. It can destroy our trust in town government

Tuttle asked if he could make a comment, Brookes said yes. Tuttle said, “you’re so concerned about the wells you didn’t mention the pond or the flowing brook at the Girl Scout Camp, which are probably in more immediate danger from siltation and erosion controls. But you talk about the gravel operation being shifted to Route 31 South and the Town’s water supply is within that newly created district and I wish that more people had realized that in March.”

It was now past 10:30 p.m. Board members decided to continue the hearing and to schedule a site visit for Sunday, June 11th at 10 a.m.

Motion Spear/Tuttle to continue the hearing to June 13, 2006 at 7:30 p.m. All in favor.

Bylaw Amendment

Motion Spear/Eckstrom to incorporate amended Applicant’s Failure to Appear language into bylaws. All in favor.

Motion Tuttle/Spear to adjourn. All in favor. Meeting adjourned at 11:15 p.m.

Minutes submitted by Diane Nilsson
Posted May 16, 2006

Last modified Sunday, October 25, 2020.



Town of Wilton, NH Zoning Board Minutes

Minutes posted at this web site have not been checked for consistency with the printed minutes that are available in the Wilton Town Offices. If you need the definitive minutes of a ZBA meeting, please obtain the printed minutes from the town offices.

June 13, 2006

Voting Board Chairperson Neil Faiman; members Joanna Eckstrom, Carol Roberts, Jim Tuttle and Bob Spear; alternate member Eric Fowler.

Agenda John Zavgren & Bridget Mooney – special exception
K.M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) – variances
Margaret O’Leary – variances
Richard Griffin – special exception

Faiman called the meeting to order at 7:35 p.m., announced the continuation date of Monday, June 19th, since he didn’t expect the Board to conclude all four cases this evening. He explained that the secretary may not complete the minutes within the usual 6 day time frame due to the extra meetings of this board and the Temple Zoning Board. He then explained the Board’s procedure for hearing cases and introduced the Board members.

Case #5/9/06-1 – ZAVGREN/MOONEY (continued from May 9)

John Zavgren and Bridget Mooney have applied for a special exception under the terms of Section 5.3.1 of the Wilton Zoning Ordinance, to permit the use of Lot C – 136, 16 West End Highway, for a wedding venue business.

Faiman noted that all of the Board members except Bob Spear, and some of the abutters, attended a site visit at Mr. Zavgren’s on Monday evening where they were able to observe where the proposed locations were where the various activities were to be carried out.

Mr. Zavgren handed out an updated proposal and Power Point presentation and said that there were three issues of concern: Traffic and Parking, Sanitation and Lighting. He said although there would be 100 parking spaces, typical occupancy would be 50; arrival and departure will be supervised. He had traffic count information from nearby intersections. (See file) He has proposed reducing his operating hours to 10 a.m. to 9:30 p.m. on Saturdays and 10 a.m. to 7:30 p.m. on Sundays with a five hour limit per event. He has proposed building a stone wall at the end of the driveway to address an abutter’s safety concern. On the advice of Dave’s Septic Service of Manchester, NH, Zavgren is proposing to have three portable toilets that would be serviced between events. They would be contained in a façade, not visible from the road and more than 300’ from the closest abutter’s well. He is proposing subtle, low-voltage, downward pointing lighting along the driveway, along a path that connects the parking to the venue and near the portable toilets.

Roberts asked about employee parking. Zavgren said that if only 50 cars are planned, then there is room to mark a number of employee spots.

Eckstrom said that a number of abutters asked about how noise would be restricted. Zavgren said that when they had the wedding there last fall, the music was inside the pavilion which attenuated the sound. In addition, the waterfall competes with the sound, he said he would monitor the sound and if necessary would install sound projecting boards to move the sound away from abutters.

Abutter Lori Ledger asked if Zavgren will have a liquor license and who will be liable for any alcohol-induced accident or behavior. Zavgren answered that he will not have a liquor license, alcohol will be served by a bartender hired by the wedding party/caterer, but he will ultimately be liable because he is the property owner. He said he will be on site at all times monitoring the event.

Amanda Krug, 18 Petty Road, asked if this were to be granted would it be for a year to see how it goes? Faiman answered that neither the Zoning nor Planning Boards are in the habit of granting probationary approvals. They decide whether something should be approved or not, typically with various restrictions and limitations. Violation of the terms of approval would be grounds for revocation.

Abutter Judy Grace asked who would be responsible for parking and how will trespassing be stopped.

Zavgren answered that he would be responsible for parking assistance and he will be planting landscaping between his property and the next property and if he needs to he will erect a fence. He said he will not allow any swimming in the brook.

Abutter Jean Scagel, Keyes Hill Road, asked if the applicant had considered renting security to direct traffic if there was a large gathering. The applicant said he has considered it and would do it if the need was there.

Christy Lilley asked if the applicant had taken into consideration how 50+ cars coming to and leaving from the applicant's property would affect the neighborhood safety, especially the intersection of West End Road and Temple Road. The applicant said he had considered it and said it might require special considerations like a policeman at that intersection but he said he really doesn't know what has to be done at this time.

Gail Hoar and Len Peterson both live very near the Red House in Wilton Center and said they have never been bothered by wedding receptions that have been held there. Dennis Orsi lives next door to the Red House and said there is no comparison between the two venues. He said no one brings bands to the Red House, everyone is gone by sundown, it's more like an AARP outing.

Ms. Grace said that the applicant has no experience in this business.

Ms. Ledger said her property is directly across West End Road from the applicant's. She has a pool in her yard and was concerned that someone from a wedding event would wander into her yard and into her pool.

Zavgren said that he is well aware that he is liable for anything that might go wrong, he said he takes that responsibility very seriously, so he will be keeping a close eye on the activities. He said he does not have experience in this particular business, but he has been working professionally for 30 years and thinks he can handle this business. He said it all comes down to whether you trust me to act responsibly.

Roberge said that he was a health commissioner in a large city and knows what it's like to be remembered years later for your vote. He said it will be the Zoning Board members that will be remembered if they vote to allow this use.

Krug said that she moved to this neighborhood from MA because it is beautiful and rural. She said she just didn't see how the combination of traffic, alcohol and children would work.

Motion Tuttle/Roberts to close the public input portion of the hearing. All in favor.

Eckstrom said that the applicant is willing to do everything in his power to control things on his property and respect public safety.

Tuttle felt that 150 people were going to be too many for the neighborhood between the congestion of the traffic and the possible noise factor. Roberts agreed with that but wanted other restrictions, like perhaps the hours. She said it was a congested area with a lot of children, and after being there last night, this doesn't feel like a comfortable use of the property.

Faiman said he is not convinced that a wedding venue is really a home occupation even though the ZBA approved one in the past. He said he was uncomfortable about it then and is uncomfortable about it now. The essence of a home occupation, he said, is that it is not a major intensive commercial activity, it is something that is well defined as minimal impact on the neighborhood, it shouldn't bother the neighbors.

He said that he lives a few hundred feet from Mill Brook, and on summer afternoons a half dozen to a dozen kids play by Mill Brook. There are trees in between the brook and his house and he hears them clearly, they're not being raucous or rowdy, they're being kids. He said that's not 100 people having a party with amplified music. It seemed to him that in the nature of things it will at the very least be distinctly noticeable to the neighbors and so he couldn't see it as the kind of thing that he believes a home occupation special exception is designed to accommodate.

Board members discussed the differences between the wedding venue on Curtis Farm Road and this request. Although there was a similar traffic congestion issue at the intersection of Dale St. and Curtis Farm Road, apparently the venue itself is on a larger more open property. Tuttle said that right now the brook on the Zavgren property is very loud, but he can imagine that when water levels are lower the banking will reflect the sound downstream to the neighbors.

Eckstrom wanted to grant the request with restrictions and limitations. Roberts said there were just too many limitations; the number of months, days and hours of operation and the alcohol and security issues. Faiman said his primary concern is the direct affect on the neighborhood; the parking, the people gathering and he wasn't terribly convinced that guests would not wander off the site and invade neighbors' properties. Spear said he felt the traffic that would be generated by this business goes against the spirit and the letter of the ordinance (5.3.1g). Board members discussed whether, if the special exception was denied, the applicant could reapply with a smaller version. They agreed it depended on the grounds that the application was denied.

Motion Roberts/Faiman to deny the special exception on the grounds that a wedding business is not appropriate to the Home Occupations section of the Ordinance 5.3.1

After some discussion Faiman withdrew his second on the above motion.

Motion Tuttle/Spear to deny the application because of the incompatibility of the proposed use with the neighborhood; safety concerns due to traffic that would have been generated; the likely impact on the neighbors' enjoyment of their property, especially due to noise; and

Eckstrom asked if a favorable vote to deny preclude the applicant from coming back with an application that has a reduced impact. Faiman answered that in his opinion if the applicant brought back another proposal and made the claim that by differences in the revised proposal that the concerns that the Board has raised here would be satisfied, then that would be sufficient justification to consider such a revised proposal. Each Board member would have to make their own decision in that case.

Eckstrom asked about what Fountain House was allowed to do in addition to being allowed to have a Bed & Breakfast. Faiman looked up the minutes and found that they were only granted a special exception for a Bed & Breakfast.

Vote 4 in favor Eckstrom voted no. The application was denied.

After a short break Faiman called the meeting to order at 8:55 p.m. He explained that the Board will not begin a new case after 10 p.m. and since he could not imagine the next case finishing before 10 p.m. he said that that the applicants for the two new cases, O'Leary and Griffin could leave if they wanted to and their cases would be automatically continued to Monday, June 19th. Mr. Griffin did choose to leave.

Case #5/9/06-2 — ZAHN/KENNEDY (continued from May 9)

K.M. Zahn and Sons (applicant) and Harold E. Kennedy (owner) have applied for variances to Sections 4.1, 6.1, 9B.2, 9B.6.1 and 9B.6.2 of the Wilton Zoning Ordinance to permit the removal of gravel from Lot F – 3, 536 Isaac Frye Highway. The requested variances are necessary for the proposed use because the lot is not in the district in which gravel excavation is permitted, and the proposed excavation would not satisfy the setback and buffer requirements of the ordinance.

Faiman said he would be disqualifying himself from the hearing as he did last month. He said he reserved the right to participate as a member of the public and he said that he makes no statement about what his action might be in the case of any future application pertaining to variances or appeals relating to the same section of the Zoning Ordinance. He said that Board member Carol Roberts has also disqualified herself. He announced the Vice Chairperson Joanna Eckstrom would be chairing the meeting and alternate member Eric Fowler would be sitting as a voting member of the Board.

Eckstrom asked the applicants' attorney, Gerald Prunier, if he would like to continue with a four-member board. He answered in the affirmative. He then handed Board members copies of the preliminary excavation plan and a Hydrogeological Assessment done by Aries Engineering, Inc.

He handed Eckstrom three letters that she read into the record. The first from Jim Spellman, Realtor-Broker with Carlson GMAC Real Estate in Amherst, NH, dated June 9, 2006. The second from Lori Worrall with RE/MAX Country Properties in Amherst, NH, dated June 9, 2006. Both letters are positive about the project. The third was an email from Karl Zahn, dated June 12, 2006, explaining the history of a project he was involved with in Lyndeborough. See file.

Andrew Fulton, with Aries Engineering, said that he walked the site property as well as the Girl Scout property. He looked at both wells and noted that they were both deep drilled bedrock wells. Spear asked how far the wells were from the Kennedy property line. Fulton said they were each 500'

from the property line. Fulton then read the conclusions of the assessment, based on site observations and review of available information as described in the preceding text.

1. The Camp Anne Jackson public water supply wells are located hydraulically upgradient of the site.
2. The proposed sand and gravel removal operations would not likely adversely affect the Camp Anne Jackson public water supply wells.
3. The proposed sand and gravel removal operations would likely result in a negligible hydraulic impact beyond site boundaries.
4. The proposed sand and gravel removal operations would likely result in a negligible adverse impact to aquifer water quality.
5. While the proposed sand and gravel removal operations could potentially result in the discharge of diesel fuel, gasoline, hydraulic fluid, grease, and the constituents of these products to the site aquifer, employing best management practices and properly maintaining equipment would reduce the potential for petroleum contaminant discharge to the aquifer.

Fulton said that Aries recommended the adoption of best management practices in order to reduce the potential for aquifer degradation due to the proposed sand and gravel removal operation.

Bill Carnduff asked if the assessment looked at the impact the operation would have on any other wells in the area and to the aquifer serving Monadnock Water. Fulton said this report did not look beyond the wells at the Girl Scout Camp. Tuttle asked if those wells were the closest to the proposed operation. Fulton answered except for the dug well on the Kennedy property.

Jerry Aubel, who lives just below the cemetery, asked if Fulton could give him any information about how the proposed operation might affect his dug well. Fulton said there are two things to consider: the quality of the water and the quantity of the water. He suggested that because Mr. Zahn is not proposing to remove water or add water to the site – a dry operation – there should be no impact on the water quantity in that dug well. He said the only risk to the quality would be a spill of some kind.

Aubel asked what recourse he would have if his water quality was ruined. Tuttle said he would have to prove that it was ruined by an operation or that there was some sort of a spill.

Spear asked Mr. Zahn how close to the water table his proposed operation would go. Zahn answered anywhere from 8' to 30' above the water table. Spear asked Fulton if that was sufficient protection for the aquifer. Fulton said in his opinion it is common to have such a situation left in a gravel excavation and he said it is uncommon to have an aquifer polluted by petroleum products from the gravel excavation. Spear asked why is that. Fulton said given the very permeable materials that are being excavated, those who are digging in that material very much have it in their interest to avoid a spill that would quickly get into the groundwater.

Spencer Brookes, Wilton Cons Com, asked if Zahn would consider biodegradable fluids. Fulton said that all fluids are biodegradable.

Chris Owen asked "Wouldn't Mr. Aubel's well be safer with a six-month housing construction project on the site, rather than an eight year gravel operation?" Zahn said the proposal will operate 5 days a week except when the road is closed or the weather is too bad and he said 8 years is an estimate. _____ Gibbons said that he takes very good care of his machines so that leaks don't develop.

Attorney Prunier read the variance criteria from the application. See file.

Raymond Shea with Sanford Survey gave a short presentation of the preliminary excavation plan. He said the pit area would be approx. 4.5 acres and it would be slightly bowl shaped to prevent any runoff. Eckstrom pointed out that the plan now shows a 50' buffer on the cemetery side and a 25' buffer on the Girl Scout side. Andy Hoar asked how can we be presented with this plan when the cemetery is asking for 150' buffers and that is not shown on the plan. "How do we know what it's really going to look like," he asked. Eckstrom said because it is a preliminary plan, it is subject to change. If the Zoning Board should grant the request, then the Planning Board would deal with the specifics of the gravel operation. She added, as to the request from the Cemetery Trustees for a 150' buffer, the Zoning Board hasn't taken any action. Zahn said he understands that people want to see a finalized plan but that can't happen until he knows exactly what both the Zoning and Planning Boards want him to do, but he added that there is no reason to think that the plan will change dramatically.

Eckstrom read a letter from New England Forestry Foundation, an abutter, dated June 12, 2006. See file.

Chris Mellor, CEO, Swift Water Council Girl Scouts, said they have three main issues of concern: safety, erosion control and wells. She said her BOD has not yet met so they cannot take an official stand for or against the project. She did state a concern about the 25' buffer. She understood from the minutes of the previous meeting that the buffer was 50' and now she's been told that it's only 25'. She didn't feel that was enough of a buffer. Eckstrom asked Zahn to respond. He said perhaps that calls for another site visit. He wants to accommodate whatever is comfortable for them.

Wilton Cemetery Trustee Jim Nelson spoke as a concerned citizen and said that the land in question could be graded out to accommodate some very nice house lots near Wilton Center and it would hopefully still leave quite a tree buffer between the lots and the cemetery. He said that the gravel ordinance that the townspeople voted on in March should be seriously considered by the Board. As a Cemetery Trustee he reiterated the request for a 150' buffer of trees between the stone wall and the hillside.

Eckstrom said that granted, the Town did vote to establish a Gravel Excavation District, but the Town did not vote to restrict a person's right to seek a variance from the Zoning Board. And as long as everyone has a right to seek a variance, special exception or appeal from administrative decision, the place to come is the Zoning Board of Adjustment. The Board can't deny that legal right.

Jed Callen, of Baldwin, Callen & Ransom, Concord, NH, stated that he represented, at latest count 84 neighbors to the proposed excavation. On behalf of his clients he first requested that ZBA member Jim Tuttle disqualify himself. He said the reason for that request is that RSA 673:14 defines the conditions under which a ZBA member is disqualified to sit on a permit or variance hearing (a quasi judicial decision). The grounds include, by explicit reference, the "juror standard." By this criterion, a

Board member may not sit on a variance request hearing if it appears that s/he is not indifferent or neutral. He said his clients believe that Tuttle is not indifferent or neutral because of comments he made at the May 9th ZBA hearing and the May 3rd Planning Board work session indicating his criticism of the passage of what is now section 9B of the Zoning Ordinance. Callen said that because Tuttle has made it a very strong point that passage of this gravel district was a mistake and a poor idea and should not have been enacted, it is reasonable to conclude that Mr. Tuttle, in opposing limiting graveling to a particular district, would not be indifferent to the question of the very first request being made to say... this isn't essentially the law here and we can grant variances from that limitation and allow gravelling elsewhere. Callen said that Mr. Tuttle's commitment to a strong position regarding the new district is at least as strong a position as those who were proponents and were formerly sitting on the Board used as a reason to disqualify themselves. He noted that he was making this request at the earliest possible moment and that he is relying on his letter for the record.

Spear asked about 673:14 and what reason Callen had for asking for Tuttle's disqualification. Spear read 673:14 where it said... may not be requested by persons other than Board members. Callen said it means a vote may not be requested by persons other than Board members. Spear said he didn't interpret the sentence that way. Callen said that in Fox v. Green 151, NH 600, that very question was raised and the answer is that the concerned abutter loses the opportunity to appeal on the basis of disqualification if s/he fails to raise the question at the earliest possible moment. He said the person in Fox failed to ask for a disqualification. Spear asked if, hypothetically, he had already made up his mind that he was in favor of this project, should he disqualify himself? Callen said yes, because he had not heard all of the testimony yet. He said a Board member needs to be as open minded as a juror or a judge and listen to all of the testimony and the facts before making a decision, and if that's not possible, or it appears that that is not possible then that Board member should disqualify him or herself.

Eckstrom allowed Attorney Prunier to speak. He said that some of the 84 people on the list that Attorney Callen represents were present at the May 9th hearing. They should have raised the disqualification issue at that time or at least it should have been raised at the beginning of the meeting. He said he's spent time making presentations to the Board and has gone ahead with a four-member board and should have known in the beginning if there was a problem with one of the members.

Callen said that this is the first public meeting on the current application for variances. The meeting on May 9th was a meeting on a defective application. It didn't list the key section of the Zoning Ordinance from which a variance is required and as a result, the applicant was sent away and told to reapply for the correct variances. He said this is the first night there has been any public comment on this application. He also said that he faxed his letter to Ms. Eckstrom at the town office earlier in the afternoon. Eckstrom acknowledged that she did receive it by fax from the town office in the afternoon. Other Board members received copies before the hearing began this evening.

Mr. Callen said that he raised the question of Mr. Tuttle's disqualification at the earliest moment that he felt he could in this meeting. He said he has done his legal duty for his clients to the best of his ability and felt the ball now rests in Mr. Tuttle's court. Mr. Tuttle said that his opposition to the gravel district is as a member of the Water Commissioners concerned over the recharge area being destroyed for the town wells by this new gravel district that was created. "Since it was created in March representatives of the Planning Board and the Water Commission have agreed that there are some serious concerns about the quality of the water and the fact that this gravel operation is over the recharge area of the town wells. That's what the opposition was in the newspaper. And some of it was misquoted, both sides were misquoted in the paper. A lot of the facts are yet to come out because people don't know all the facts about this and we've agreed as a combined board that we need to do some more exploration down there, we need to define the wellhead protection area and the recharge area of the wells so that we don't damage the aquifer that the wells are in. And that's what the opposition to the gravel district is."

There was no motion from the Board requesting that Tuttle disqualify himself from the Board.

Attorney Callen continued his presentation stating that the Zahn application is legally deficient in that it requests one use variance, where two and possibly three separate use variances are required and one area variance is required, so on its face it's inadequate.

- Variance from Section 9B.6.1 Setbacks and Buffers. Callen notes that the applicant fails to identify, in the application, the width of the buffer it proposes in lieu of the 300' requirement. He said that in order for the Board to be able to analyze whether the buffer is adequate, it would be useful for the applicant to disclose what they are actually proposing. He said that a request for a reduction in a dimension is an area variance – he cites court cases in his letter – and the applicant didn't even fill out that section of the application. The applicant mentions not being able to meet the setback requirement in two places on the application, but Callen says this falls short of meeting the seven part test of the area variance. He suggested that the first test – no diminution of property values – cannot be met by active gravelling within 50' or 60' of these buffers.

Eckstrom said it was past 10:30 and time to stop the hearing.

Spear said that after the Board met with Town Counsel, they were advised to consider the application a use variance with supplemental provisions in the Ordinance.

Eckstrom said that all the material relative to this case is available for inspection in the town office including the application and all the letters that have come in. She explained that originally she thought that applications were not a part of the public record until abutters were noticed. Actually, they are available for inspection as soon as they come in. She said she also thought letters from concerned parties did not get entered into the public record until the hearing, but they are also available for inspection as soon as they arrive. She said she has made copies of all letters that have arrived so far and she read a list of everything relating to the Zahn case that people might want to read or copy.

Motion Fowler/Tuttle to continue the hearing to Monday, June 13, 2006 at 7:30 p.m. All in favor.

There was a unanimous vote of the board to continue the meeting at 10:45 p.m.

OTHER BUSINESS

Minutes — May 9, 2006

Motion Tuttle/Spear to approve 5/9/06 minutes as printed. All in favor,

Faiman thought it should be noted in the minutes that Eckstrom had, in fact, read the request for disqualification prior to the opening of the hearing.

Motion Spear/Roberts to adjourn. All in favor. Meeting adjourned at 11:20 p.m.

Minutes submitted by Diane Nilsson
Posted June 26, 2006

Last modified Sunday, October 25, 2020.

152 Morrill Road
Canterbury, NH 03224

Phone: (603) 783-4802
Fax: (603) 783-4851

June 26, 2006

Mr. Karl Zahn
K.M. Zahn & Sons
P.O. Box 75
Milford, New Hampshire

RE: Traffic Impact of Proposed Gravel Pit
Map F, Lot 3, Isaac Frye Highway, Wilton

Dear Mr. Zahn:

Per your request, I have reviewed the proposed gravel pit operation on Map F, Lot 3 with respect to off-site traffic impacts. My observations and recommendations are presented herein and are based on a personal field visit, traffic counts conducted at the Route 101/Isaac Frye Highway intersection, and a review of the Wilton Zoning Board of Adjustment meeting minutes from May 9, 2006 and June 13, 2006.

Proposed Development

It is proposed to remove gravel from Map F, Lot 3, 536 Isaac Frye Highway. The site is a 12.78± acre parcel located on the east side of Isaac Frye Highway, approximately 800 feet from Route 101 in Wilton, New Hampshire. Based on statements made at the Town of Wilton Zoning Board of Adjustment, it is my understanding that truck traffic to and from the site would operate as follows:

- The gravel pit will operate on weekdays from 7:00 AM to 4:30 PM.
- The gravel would be excavated using eight trucks which would each visit the site four times per day. It was further confirmed in our conversations that the trucks are limited to a maximum four trips per day and on some days may only make three round trips.
- Based on our conversations, employees travel to the site in the morning with an empty truck and leave at the end of the day with a full truck, therefore, there are no additional trips associated with employee traffic.
- The truck traffic would be limited to Isaac Frye Highway to the south, i.e. no trucks would turn to the north and travel through Wilton Center.
- Trucks would not be permitted to travel on Route 101 westbound to and from the site.

Based on the expected gravel pit operations described above, the estimated daily traffic generated by the proposed gravel pit is 32 truck trips northbound and 32 truck trips southbound on Isaac Frye Highway between Route 101 and the site. These trips would utilize Route 101 to/from the east only.

Existing Conditions

The proposed site is on the east side of Isaac Frye Highway approximately 800 feet north of Route 101. Access to the site is proposed via a single driveway. At the proposed site driveway intersection, Isaac Frye Highway is 21 feet wide with 1-2 foot gravel shoulders and has recently been paved. Sight distance from the site driveway looking to the south is good. Sight distance to the

*Traffic
Studies*

letter to Mr. Zahn
RE: Gravel Pit, Wilton
June 26, 2006
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north is slightly restricted by the embankment on the northeastern corner of the site driveway intersection.

As noted above, truck traffic will be restricted to Isaac Frye Highway south of the site and then to Route 101 to and from the east. At the intersection with Isaac Frye Highway, Route 101 is 35 feet wide including five foot wide paved shoulders on each side. At the intersection, Isaac Frye Highway is 23 feet wide. The Brookside Mini-mart/Mobil gas station is located on the south side of Route 101 opposite Isaac Frye Highway. Brookside has two driveways onto Route 101. The eastern most driveway is 46 feet wide and located to the east of Isaac Frye Highway. The western driveway to Brookside is 50 feet wide and located opposite Isaac Frye Highway. The posted speed limit on Route 101 transitions from 45 miles per hour at the intersection to 50 mph west of the intersection.

Isaac Frye Highway intersects Route 101 at a sharp angle and is sloped towards Route 101. Despite the angle, sight distance appears to be adequate for vehicles exiting Isaac Frye Highway and looking east or west on Route 101. The angle of the intersection improves the turning radius for vehicles turning to and from Route 101 to the east, however, this angle severely hampers turns to and from Route 101 west. A truck would not likely be able to turn from Isaac Frye Highway onto Route 101 west without crossing the centerline on one or both roads, therefore, the proposed gravel pit truck traffic has been limited to Route 101 east of Isaac Frye Highway.

It was also noted that the existing topography and layout of the intersection does not permit a flat platform at the end of Isaac Frye Highway at Route 101. However, provision of such a platform would require regrading a portion of Isaac Frye Highway or widening and realigning Route 101 to provide a wider shoulder.

Traffic Volumes

Manual turning movement counts were conducted at the intersection of Route 101/Isaac Frye Highway on Friday, June 23, 2006 from 6:30-9:00 AM and from 3:00-5:30 PM. Traffic at the intersection was found to peak from 7:15-8:15 AM and from 3:30-4:30 PM. Detailed traffic count data is attached to this letter and presented in Figure 1.

Assuming the worst case traffic flow at the gravel pit, eight trucks would enter and exit the site during the peak hours of the intersection. As shown in Table 1, the traffic volumes on Isaac Frye Highway between the site and Route 101 would increase from 37 vehicles in the AM peak hour and 67 vehicles in the PM peak hour to 53 and 83 vehicles in the AM and PM peak hours, respectively. While the percentage increase is relatively high, the resulting volumes are still considered low and well within the capacity of Isaac Frye Highway and the intersection of Route 101/Isaac Frye Highway.

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TABLE 1 – TRAFFIC VOLUMES - ISAAC FRYE HIGHWAY NORTH OF ROUTE 101

CONDITION	VEHICLES PER HOUR					
	WEEKDAY AM PEAK HOUR			WEEKDAY PM PEAK HOUR		
	NORTHBOUND	SOUTHBOUND	TOTAL	NORTHBOUND	SOUTHBOUND	TOTAL
EXISTING	15	22	37	37	30	67
GRAVEL PIT	8	8	16	8	8	16
TOTAL	23	30	53	45	38	83

Recommendations

Based on the results of the field visit, traffic counts and consideration of the proposed traffic operations in the area, I have the following recommendations to offer:

1. The embankment on the northeast corner of the site driveway intersection with Isaac Frye Highway should be cut back to improve sight distance looking north from the site driveway;
2. The gravel pit truck traffic should be prohibited from turning right from Isaac Frye Highway onto Route 101 and from turning left from Route 101 onto Isaac Frye Highway; and,
3. The Town of Wilton should consult with NHDOT to determine if any improvements could be made to provide a platform for vehicles on Isaac Frye Highway at Route 101.

In summary, the proposed gravel pit traffic impact will be limited and well within the capacity of the existing roadway system. If the proposed travel restrictions are placed on the gravel pit operations, i.e. truck traffic limited to Route 101 to and from the east, there are no safety hazards created by the proposed gravel pit truck traffic.

I trust this information has been helpful. Please call me if you have any questions.

Sincerely,



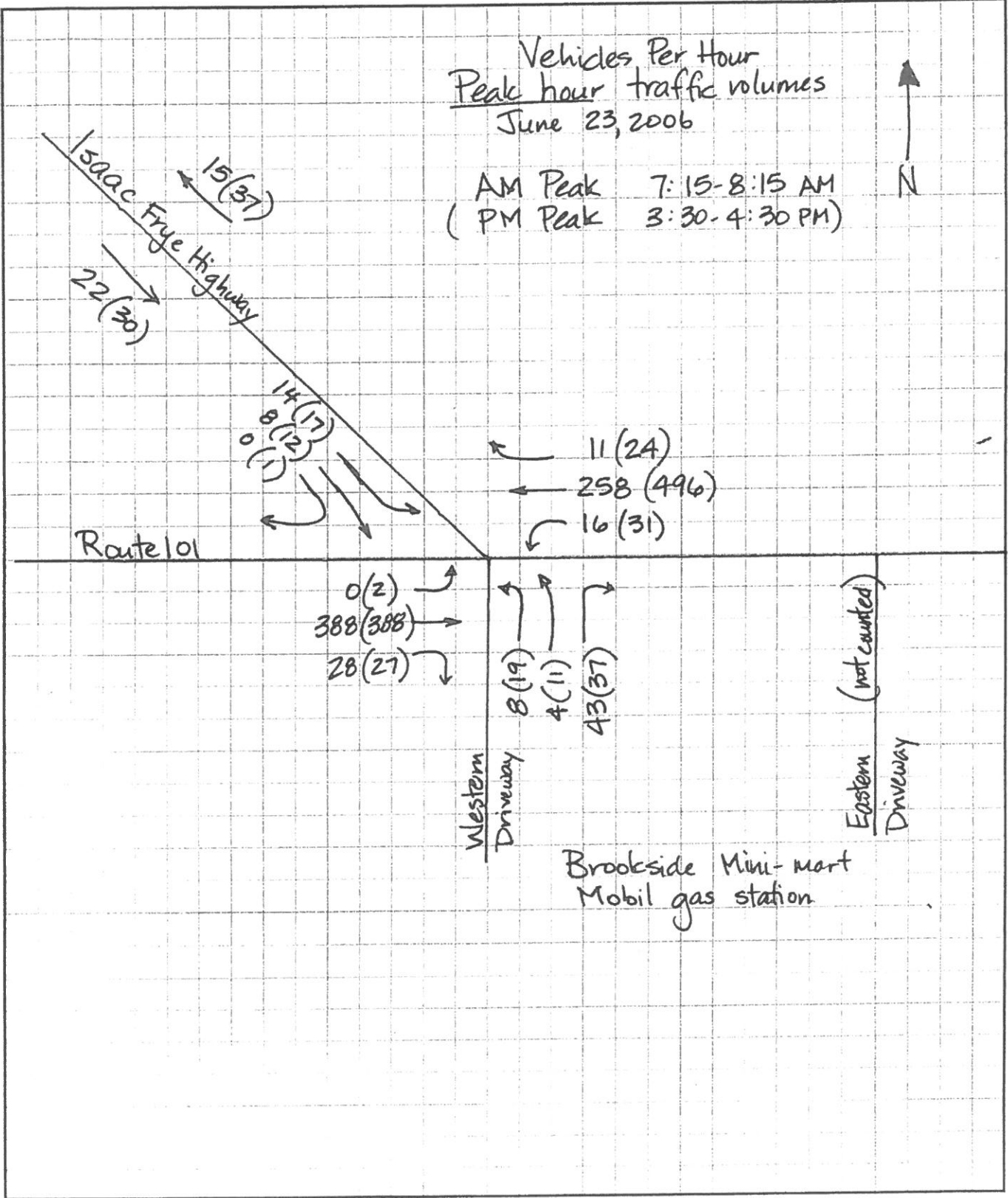
Laurie M. Rauseo, P.E., PTOE

Laurie M. Rauseo, P.E., PTOE
 152 Morrill Road
 Canterbury, NH 03224
 (603) 783-4802

PROJECT NO. 2006-11 DATE 6-26-06
 PROJECT NAME Wilton Gravel Pit
 SHEET NO. 1 OF 1
 ITEM Traffic Counts - Figure 1

Vehicles Per Hour
Peak hour traffic volumes
 June 23, 2006

AM Peak 7:15-8:15 AM
 (PM Peak 3:30-4:30 PM)



Accurate Counts
978-664-2565

N/S Street : Issac Frye Highway
E/W Street: Route 101
City/State : Wilton, NH
Weather : Rain

File Name : 12410001
Site Code : 12410001
Start Date : 6/23/2006
Page No : 1

Groups Printed- Cars - Trucks

Start Time	Issac Frye Hgwy From North			Route 101 From East			Mobil Dr From South			Route 101 From West			Int. Total
	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	
06:30	4	1	0	3	57	1	5	1	6	0	97	6	181
06:45	2	1	1	2	54	1	1	1	5	0	78	5	151
Total	6	2	1	5	111	2	6	2	11	0	175	11	332
07:00	3	0	0	3	53	1	1	0	10	0	94	6	171
07:15	4	3	0	1	59	2	2	1	12	0	102	10	196
07:30	5	2	0	2	82	3	2	1	8	0	94	8	207
07:45	3	2	0	8	55	2	3	2	11	0	106	4	196
Total	15	7	0	14	249	8	8	4	41	0	396	28	770
08:00	2	1	0	5	62	4	1	0	12	0	86	6	179
08:15	7	0	0	7	71	3	2	2	9	0	85	5	191
08:30	5	0	0	2	73	0	3	2	4	0	87	4	180
08:45	6	0	0	5	68	3	5	2	10	0	90	7	196
Total	20	1	0	19	274	10	11	6	35	0	348	22	746
Grand Total	41	10	1	38	634	20	25	12	87	0	919	61	1848
Apprch %	78.8	19.2	1.9	5.5	91.6	2.9	20.2	9.7	70.2	0	93.8	6.2	
Total %	2.2	0.5	0.1	2.1	34.3	1.1	1.4	0.6	4.7	0	49.7	3.3	
Cars	40	9	1	34	558	19	22	12	82	0	850	60	1687
% Cars	97.6	90	100	89.5	88	95	88	100	94.3	0	92.5	98.4	91.3
Trucks	1	1	0	4	76	1	3	0	5	0	69	1	161
% Trucks	2.4	10	0	10.5	12	5	12	0	5.7	0	7.5	1.6	8.7

Start Time	Issac Frye Hgwy From North				Route 101 From East				Mobil Dr From South				Route 101 From West				Int. Total
	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	
07:15	4	3	0	7	1	59	2	62	2	1	12	15	0	102	10	112	196
07:30	5	2	0	7	2	82	3	87	2	1	8	11	0	94	8	102	207
07:45	3	2	0	5	8	55	2	65	3	2	11	16	0	106	4	110	196
08:00	2	1	0	3	5	62	4	71	1	0	12	13	0	86	6	92	179
Total Volume	14	8	0	22	16	258	11	285	8	4	43	55	0	388	28	416	778
% App. Total	63.6	36.4	0		5.6	90.5	3.9		14.5	7.3	78.2		0	93.3	6.7		
PHF	.700	.667	.000	.786	.500	.787	.688	.819	.667	.500	.896	.859	.000	.915	.700	.929	.940

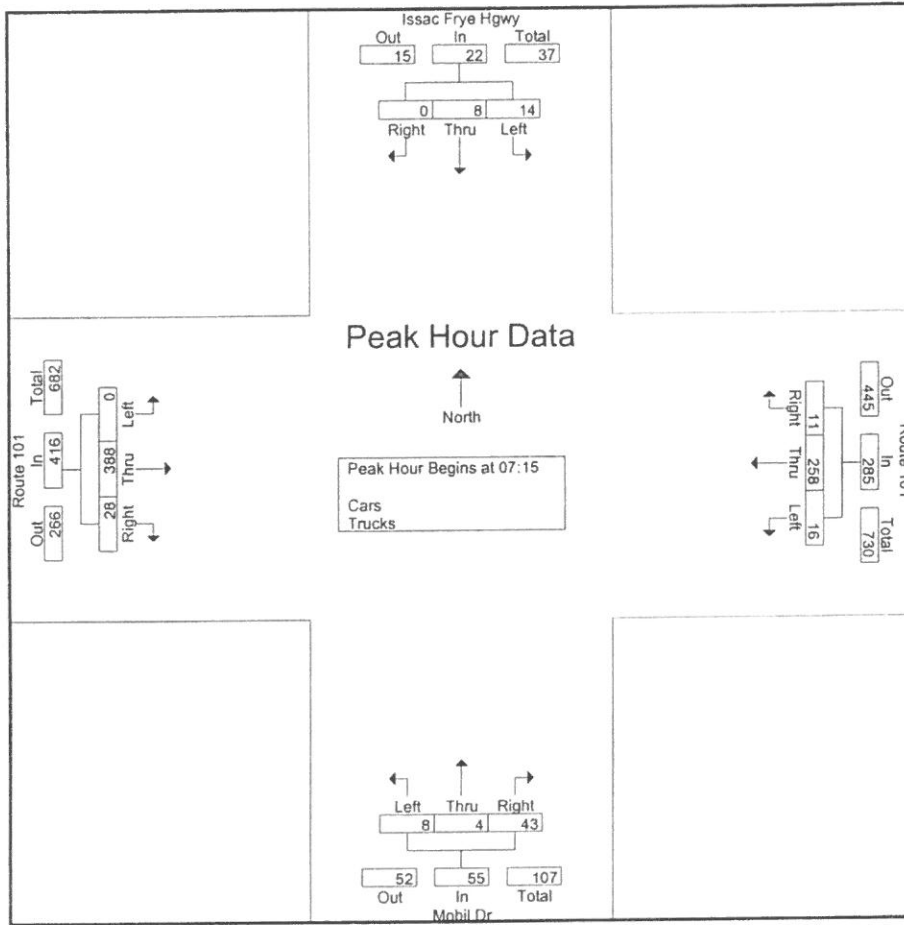
Peak Hour Analysis From 06:30 to 08:45 - Peak 1 of 1

Peak Hour for Entire Intersection Begins at 07:15

N/S Street : Issac Frye Highway
 E/W Street: Route 101
 City/State : Wilton, NH
 Weather : Rain

Accurate Counts
 978-664-2565

File Name : 12410001
 Site Code : 12410001
 Start Date : 6/23/2006
 Page No : 2



Accurate Counts
978-664-2565

N/S Street : Issac Frye Highway
E/W Street: Route 101
City/State : Wilton, NH
Weather : Rain

File Name : 12410001
Site Code : 12410001
Start Date : 6/23/2006
Page No : 1

Groups Printed- Cars - Trucks

Start Time	Issac Frye Hgwy From North			Route 101 From East			Mobil Dr From South			Route 101 From West			Int. Total
	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	Left	Thru	Right	
15:00	7	3	0	3	88	2	3	1	6	1	85	10	209
15:15	3	0	0	7	133	8	6	1	3	1	88	7	257
15:30	2	3	0	2	123	7	2	2	13	1	90	7	252
15:45	5	3	0	5	129	8	4	3	7	1	95	5	265
Total	17	9	0	17	473	25	15	7	29	4	358	29	983
16:00	5	3	0	8	123	4	7	0	10	0	112	7	279
16:15	5	3	1	16	121	5	6	6	7	0	91	8	269
16:30	4	1	0	3	117	6	8	3	5	0	92	6	245
16:45	4	2	0	13	136	6	10	1	7	0	88	4	271
Total	18	9	1	40	497	21	31	10	29	0	383	25	1064
17:00	3	2	0	15	120	6	10	2	7	0	100	3	268
17:15	4	0	1	7	124	9	5	1	5	0	103	5	264
Grand Total	42	20	2	79	1214	61	61	20	70	4	944	62	2579
Apprch %	65.6	31.2	3.1	5.8	89.7	4.5	40.4	13.2	46.4	0.4	93.5	6.1	
Total %	1.6	0.8	0.1	3.1	47.1	2.4	2.4	0.8	2.7	0.2	36.6	2.4	
Cars	40	18	2	78	1176	60	60	18	69	4	886	61	2472
% Cars	95.2	90	100	98.7	96.9	98.4	98.4	90	98.6	100	93.9	98.4	95.9
Trucks	2	2	0	1	38	1	1	2	1	0	58	1	107
% Trucks	4.8	10	0	1.3	3.1	1.6	1.6	10	1.4	0	6.1	1.6	4.1

Start Time	Issac Frye Hgwy From North				Route 101 From East				Mobil Dr From South				Route 101 From West				Int. Total
	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	Left	Thru	Right	App. Total	
15:30	2	3	0	5	2	123	7	132	2	2	13	17	1	90	7	98	252
15:45	5	3	0	8	5	129	8	142	4	3	7	14	1	95	5	101	265
16:00	5	3	0	8	8	123	4	135	7	0	10	17	0	112	7	119	279
16:15	5	3	1	9	16	121	5	142	6	6	7	19	0	91	8	99	269
Total Volume	17	12	1	30	31	496	24	551	19	11	37	67	2	388	27	417	1065
% App. Total	56.7	40	3.3		5.6	90	4.4		28.4	16.4	55.2		0.5	93	6.5		
PHF	.850	1.000	.250	.833	.484	.961	.750	.970	.679	.458	.712	.882	.500	.866	.844	.876	.954

Peak Hour Analysis From 15:00 to 17:15 - Peak 1 of 1

Peak Hour for Entire Intersection Begins at 15:30

N/S Street : Issac Frye Highway
 E/W Street: Route 101
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 Weather : Rain

Accurate Counts
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File Name : 12410001
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