



**TOWN OF WILTON
ZONING BOARD OF ADJUSTMENT BOARD MEETING
Approved Minutes**

DATE: December 13, 2016
TIME: 7:30 PM
PLACE: Wilton Town Hall Courtroom

PRESENT: ZBA Board Members: Chairman, Neil Faiman, Paul Levesque, Joanna Eckstrom, Andy Hoar, Bob Spear, Secretary: Susan Pliner.
Absent: Vice-Chair, Carol Roberts (recused)

Attendance: Wilton Conservation Commission Member, Jeff Stone, Planning Board, Kermit Williams, Building Inspector, John Shepardson, Town Administrator, Scott Butcher, Planning Board Chair, Jeff Kandt, William and Kathleen Raney, Oliver Wheeler.

PUBLIC HEARING

Chairman Faiman opened the meeting at 7:30 PM. and announced the Case number for the hearing is 121316

Minutes: October 11, 2016 Draft Minutes

The Draft Minutes from October 11, 2016 were reviewed.
A MOTION to accept the minutes as written was made by Ms. Eckstrom and SECONDED by Mr. Hoar.
Voting: 5 ayes, Motion carried.

Case # 121316, Raney

Before the hearing began, Mr. Faiman raised the question of timeliness of application submission, quoting relevant laws stated in RSA 676.5 of the Town Ordinance that an appeal of an administrative decision shall be filed within 30 days of a decision (made by the Board of Selectmen on August 20th, 2016). When filed, the application was incomplete, missing abutter list and relevant fees. A more complete application was filed in mid November, six weeks after the deadline. Mr. Raney stated that there had been an ongoing discussion with Mr. Faiman, documented by copies of emails between the two, which were later distributed by Ms. Raney.

Ms Eckstrom MOVED that intent to file was made within a timely period. Mr. Hoar SECONDED

Voting: Ayes: Levesque, Eckstrom, Hoar, Spear.

Nay: Faiman

Motion carried

The Chair then opened the hearing, stating that the Board may ask questions of Mr. Raney, but the audience is to remain silent until this portion of the hearing is complete. When Mr. Raney has concluded his remarks the Board Chair closes discussion. The case may be continued if not resolved.

Ms. Raney distributed copies of emails between Mr. Raney and Mr. Faiman.

Mr. Raney stated that construction on Lot F-2-1, 32 Coburn Road was completed in August 2016. In August, the Town of Wilton required an impact fee prior to awarding a Certificate of Occupancy. Mr. Raney stated he had no knowledge of the existence of such a fee.

On August 12th, when scheduling a visit, Building Inspector, John Shepardson told Mr. Raney to make sure he had his impact fee check prepared for \$5,406. This, according to Mr. Raney was the first he had heard anything about an impact fee. The house passed inspection; Mr. Raney and Mr. Shepardson agreed that the check would be held until the matter was settled. On August 29th, Mr. Raney went before the Town Selectmen to state his case. Although sympathetic, they agreed they could not waive the impact fee.

Ms. Eckstrom asked if mention of an impact fee was on the building permit application. Mr. Shepardson said it was not.

Ms. Eckstrom asked when Mr. Raney had obtained the building permits. Mr. Shepardson answered that he had two permits, one for the foundation on June 30th 2015, and the permit for the house was dated August 27th 2015. The drawings for the house were not complete at that time. In addition, there was no mention on the application of an impact fee.

Selectman Williams noted that although not on the permits, the impact fee was added in 2004, but it took until 2014 for fee schedules to be devised. Mr. Williams further stated that anyone obtaining building permits issued after adoption of the fee schedule (2014) should be assessed impact fees.

It was noted by Mr. Raney that in Chapter 25.5.2 of Wilton Zoning Ordinances “impact fees should be assessed prior to the issuance of a building permit.”

Mr. Faiman asked the Town Counsel what “assessment” in this situation means and was told that the impact fee is a flat fee, not dependent on size of structure. There was discussion between Mr. Kandt and Mr. Butcher on whether “shall assess” means notifying the permit applicant. Ms. Raney stated that it would have required a lawyer to interpret the language on the town website. Mr. Faiman stated that the ZBA agrees that the system is flawed. And that the Board was investigating whether an error has been made. Even though its existence was hidden, the imposition of the fee was not a mistake.

Ms. Eckstrom moved that the Board grant the request of the waiver to the impact fee, moved to grant because land owner was not noticed of impact fee. Motion was not seconded.

Mr. Hoar MOVED to close the hearing to the public, SECONDED by Mr. Levesque. All were in favor. Motion carried.

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Mr. Hoar noted that **Section 25** of Wilton Land Use Laws makes no mention of impact, and that statements about impact fees are not appended. **25.3** lists the impact fee schedule from 2014.

Mr. Spear MOVED to reopen the hearing to the public, SECONDED by Mr. Levesque. Motion carried.

Mr. Williams stated that the Planning Board hired a consultant, Bruce Mayberry, who made the impact fee schedule based on the projected financial costs to the Town, of new structures for schools, Fire Department and Road Maintenance.

Mr. Spear asked if impact fee mounts are different for commercial/industrial sites.

Ms. Eckstrom asked Mr. Kandt if the new houses on Riverwalk Way are being assessed. Mr. Kandt replied that assessment is assumed, unless the building permit(s) were filed prior to application of impact fee laws. Builder/developers can pass the cost of the impact fee on in the purchase price.

Mr. Hoar brought up NH Megan's law which requires that a vehicle's roof be completely cleared of snow – and that arrests are made under that law, even though it isn't posted or in writing on drivers' licenses, etc.

Mr. Spear MOVED to close the hearing, SECONDED by Mr. Levesque. Motion carried.

Mr. Hoar said the rollout of impact fees has been “botched,” not marked on building permit applications, and the Town has failed to inform potential residents who are building structures.

Mr. Spear asked if the Zoning Board could move to waive the fee in Mr. Raney's case. Mr. Faiman said “absolutely not”.

Mr. Spear MOVED to deny the Raney's request for a waiver, appeal of administrative decision, because the Town of Wilton made no error in requiring the payment of the impact fee, per Ch. 25 of the Wilton Zoning Ordinance. SECONDED by Mr. Levesque.

Voting:

Mr. Spear: aye

Mr. Levesque: aye

Ms. Eckstrom: nay

Mr. Spear: aye

Mr. Hoar: aye

Motion Carried

4-1 Appeal denied. The Raney's have 30 days to request a rehearing. Absence of such request within the deadline (1/24/17 if counting business days, or 1/13/17 counting *all* days) means that the Zoning Board of Appeals decision becomes final.

Mr. Spear MOVED to adjourn the meeting at 9:15PM, Mr. Levesque SECONDED

Respectfully submitted,

Susan Pliner, secretary

Approved 1/10/17