

**Town of Wilton, New Hampshire**  
**Zoning Board of Adjustment**  
Draft Minutes

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4  
5 **DATE:** December 10, 2019  
6 **TIME:** 7:30 PM  
7 **LOCATION:** Town Hall, Courtroom, 42 Main Street, Wilton  
8 **PRESENT:** Neil Faiman, Chair; Joanna Eckstrom, Vice-chair; Andy Hoar; Jeff Stone; Paul  
9 Levesque; Peter Howd (Alternate); Bob Spear (Alternate); Judith Klinghoffer (Alternate)  
10 Absent:  
11 **Staff:** Land Use Administrator Michele Decoteau  
12 **Attendees:** Deb Abrams-Dematte, Nikki Andrews, Chris Balch, Ralph Bushman, Pam Campman,  
13 Jennifer Beck, Joe Coffey, Shannen Coffey, Don Dion, Dodie Finlayson, William  
14 Finlayson, Andrew Finlayson, Glynn Graham, Hennette Isene, Paula Iasella, Sherry  
15 Jennings, Marilyn Jonas, R. Kahn, Andrew Kennedy, Bridget Mooney, Margery Nelson,  
16 Lynne Pentler, Jim Quinn, Tom Quinn, Heidi Robachaud, Robert Silva, Sebastian  
17 Valente, Wicolina Valente, Joe Wichert (Wichert LLS, Inc.), Barbara Woodward, John  
18 Zavgren  
19

20 1. CALL TO ORDER BY THE CHAIRPERSON

21 N. Faiman called the meeting to order at 7:31 PM.  
22

23 2. INTRODUCTION OF BOARD MEMBERS BY THE CHAIRPERSON

24 N. Faiman, Chair, introduced the Board members. N. Faiman said that Signs are subject to the  
25 same rules as any other testimony. Signs can be held up when it is time to provide testimony and  
26 signs may be held up as testimony. Once the Board is no longer taking testimony, the signs, just  
27 like any other conversation, should be taken to the hallway.  
28

29 The Board received a rehearing request from the Quinn's (applicant for case #07/09/19-1) and  
30 that will be in the Communications and Miscellaneous to schedule a time. The Board must  
31 respond to the request within 30 days, but the regular January meeting will be 35 days after the  
32 request.  
33

34 3. MINUTES OF PREVIOUS MEETINGS

35 **J. Eckstrom MOVED to change the order of the agenda and move the minutes to after the**  
36 **first case. B. Spear SECONDED. All in favor.**  
37

38 4. CASE 11/12/19-1

39 N. Faiman read the public notice.

40 Board members on the case: B. Spear, J. Stone, P. Levesque, N. Faiman, and J. Eckstrom. Other  
41 members will be participating in the discussion but not voting.

42 The Board completed a site walk on 11.23.19. The Conservation Commission had a site walk  
43 and provided a letter of support.

44

45 J. Wichert reviewed the case. This is a 56 acre lot with frontage on Lyndeborough Center Road  
46 in Wilton and a large portion of the lot is in Lyndeborough but all the frontage is in Wilton. This  
47 property was originally developed in 2005 or 2006. The applicant is not looking to develop the  
48 lot, but wants to allow for a single driveway across from Pead Hill Road. This crosses a wetland  
49 and is in the wetland conservation district. In the future, he may do a lot line adjustment. The  
50 buyer who was originally going to purchase the lot passed away, so that plan is no longer going  
51 to happen.

52

53 J. Wichert said that the wetland disturbance is going to be 770 square feet in total, and 557  
54 square feet will be a permanent disturbance. The state dredge and fill application was approved.

55

56 J. Wichert said he is asking for relief for developing a lot that doesn't require any other relief.  
57 The wetland disturbances are being done this in accordance with DES best practices.

58

59 J. Eckstrom asked if the driveway coming in from Pead Hill will be for a single family house or  
60 will this be developed. J. Wichert said there is only frontage for one lot.

61

62 P. Howd, speaking for the Conservation Commission, said they had no problem with the plan.

63

64 J. Wichert said there was a large oak that is next to the planned driveway and if the board  
65 requests it, they will do their best to accommodate keeping the tree and adjusting the driveway.

66

67 Abutter comments

68 C. Balch said as an abutter he has no objections.

69 P. Iasella said when she bought her property, she had an easement, would this affect that? How  
70 will they deal with power lines? J. Wichert said there was an easement for slopes and drainage if  
71 a road was going to come across from Pead Hill, but with a driveway this won't affect her  
72 property. The utilities will follow what the town says. P. Iasella asked if the owner was planning  
73 on putting on a spec home or selling it as a vacant lot? J. Wichert said he didn't know.

74 A. Hoar asked if this was going to remain a single lot? J. Wichert said at this point yes.

75

76 **P. Levesque MOVED to go into deliberations. J. Eckstrom SECONDED. All in favor.**

77

78 P. Levesque said that the Board did a site walk and understand the plan. He said he sees no  
79 problem with the plan.

80

81 J. Eckstrom said she saw it from the road. She said it seems like the driveway was in the  
82 appropriate location.

83

84 J. Stone said that on the site walk J. Wichert showed the location of the driveway and the culvert.  
85 It will be an 18 inch culvert that will be more than adequate to hold the water. This is a perfectly  
86 adequate plan.

87

88 N. Faiman said the point of a Special Exception is to determine if the crossing is essential to the  
89 use of the property, then to determine if there is no practical other way to access this property,  
90 and to see that adverse effects are minimized. N. Faiman said that there is no other way and this  
91 is a minimal crossing. This was a slightly damp ditch but not a perennial stream or swamp. The  
92 criteria were met to him.

93

94 **J. Eckstrom MOVED to grant the Special Exception to allow the wetland crossing**  
95 **according to the submitted plan. P. Levesque SECONDED.**

96

97 Discussion

98 There was no further discussion.

99

100 Vote

101 B. Spear - yes

102 J. Stone - yes

103 P. Levesque - yes

104 N. Faiman - yes

105 J. Eckstrom – yes. The motion carries.

106

107 N. Faiman reviewed the appeal process.

108

109 5. MINUTES OF 10.23.19

110

111 Line 95 ... Green not Grant

112 Line 175 ... part not port

113 Line 232 ... Akers not Acres

114

115 **B. Spear MOVED to accept the minute of 10.23.19 with corrections. P. Levesque**  
116 **SECONDED.**

117 Discussion

118 T. Quinn asked about the comments in the minutes that were unfinished or unclear. He wanted  
119 to know how the gaps or missing pieces were recreated. The Board said that they are corrected to  
120 be what the Board remembers and it is not a transcript. T. Quinn asked about the role of recused

121 board members and their comments on the minutes. The discussion continued about how  
122 accurate the minutes are and that minutes are not the same as a transcript.

123

124 J. Eckstrom asked about line 440 and if that is what J. Klinghoffer remembered. J. Klinghoffer  
125 said this was what she remembered and how the section read. There were more discussions  
126 about corrections and if they were accurate.

127

128 **B. Spear withdrew his motion.**

129

130 M. Jonas, from the audience, said that in line 418 she said indistinguishable not indisputable.

131

132 N. Faiman said he thought the minutes accurately reflected the substance of the meeting. Other  
133 Board members concurred. Minutes from 10.23.19 will be taken up at the next ZBA meeting.

134

135 6. MINUTES FROM 11.12.19

136

137 **J. Eckstrom MOVED to approve the minutes of 11.12.19 as amended. B. Spear**  
138 **SECONDED.**

139

140 Discussion

141 There was discussion about the deliberations. B. Spear said he heard N. Faiman as written on  
142 line 365.

143

144 Vote

145 **All in favor. A. Hoar, J. Klinghoffer, and P. Howd abstained.**

146

147 7. Request for rehearing by Joanna Eckstrom

148

149 J. Klinghoffer said that before taking up the matter of the rehearing, she wanted to make clear  
150 she was not recusing herself from the preliminary discussion of whether the ZBA Board  
151 members could or could not request a rehearing. The Board briefly discussed recusal and if it  
152 was required. P. Howd recused himself from this discussion and the request for rehearing. .

153

154 N. Faiman explained the history of J. Eckstrom's request. J. Eckstrom originally asked that the  
155 Board discuss her concerns, she did not ask for a rehearing. He didn't think it was appropriate to  
156 discuss the procedure that led to a decision that was not yet final. Once the decision is final, then  
157 the Board can discuss the process informally.

158

159 N. Faiman said the general rule used to be that a Board member doesn't have the right to request  
160 rehearing. Board members don't have standing. However in 2007, 74 Cox street V Nashua, is a

161 case describing how a ZBA has the authority to revisit their own decision to rehear a case and the  
162 OSI ZBA handbook says that a Board member can request they rehear cases within the appeal  
163 period in the interests of justice. But the finding is about the rehearing. The Supreme Court said  
164 that the ZBA can change their mind. They never address the reconsidering from scratch. But the  
165 OSI handbook states that they believe that municipal boards have the power to reverse  
166 themselves.

167  
168 J. Klinghoffer said N. Faiman is interpreting this decision too narrowly. In the language of the  
169 conclusion - the ZBA has the inherent authority, and in at least four other locations - the court  
170 states unequivocally, the ZBA has the power to reconsider their own decisions and potentially  
171 correct errors within the statutory appeal period. This is a less narrow interpretation. There is  
172 nothing to suggest the Board can reconsider for any reason but only substantive or procedural.

173  
174 N. Faiman said that decisions don't fall from the sky, they are started by someone. J. Eckstrom  
175 has made a request to the Board. Note that this is not the same as an interested party and that this  
176 is a different process; it is more open ended.

177  
178 J. Klinghoffer said that the Board reconsidering its own decision is more economical since it  
179 doesn't go right to court. J. Klinghoffer recused herself from the rest of the rehearing at 8:52  
180 PM.

181  
182 **B. Spear MOVED that it is in order for the Board to hear J. Eckstrom's request for a**  
183 **rehearing. P. Levesque SECONDED.**

184  
185 Vote

186 B. Spear - yes.

187 J. Stone - yes.

188 P. Levesque - yes.

189 J. Eckstrom - yes.

190 A. Hoar and N. Faiman abstained. Motion carried.

191  
192 J. Eckstrom said she believed that the board made an error. There was a six-page letter available  
193 before the vote and it could be viewed as prejudicial in this case. She has been on the ZBA for a  
194 long time and has never seen any Board prepare and hand out a document of this nature before.

195  
196 The Board discussed the timing of the decision, discussion, and when the document was shared.  
197 The document was used for the precise technical reasons to deny but the decision had been made  
198 prior to that and Board members had the opportunity to say they didn't want to use it.

199

200 N. Faiman said he disagreed and pointed out that The Board didn't give that to everyone, HE  
201 gave it to everyone. Each Board member prepared their own research and whatever notes they  
202 wanted and needed. N. Faiman said he did his own research and that brought him to the  
203 conclusion for denial that there was no hardship and he prepared a draft decision.  
204

205 The Board discussed the steps typically used in crafting a decision.  
206

207 J. Eckstrom said sharing a draft decision has never been done and this is a technical error.

208 N. Faiman asked what the error was? He said ZBA members should review the case, the law, and  
209 prepare their reasons for their decision. A. Hoar said when we have complicated cases, I have  
210 written down notes to use when I am in the decision making part. Then I have my notes to refer  
211 to.  
212

213 J. Eckstrom said but that is done contemporaneously, at the meeting. What she was concerned  
214 about was the length of the document. The Board discussed the timing of the sharing of the  
215 document. They reiterated that it was shared after a decision had been formed. Each of them had  
216 the opportunity to share their opinion. N. Faiman what was exceptional in this case, is that we  
217 had four months of testimony, we had long meetings, many letters, and we had heard their verbal  
218 presentation that was consistent with their applications. In other words 90% of the time, we made  
219 a decision within a single meeting. In about 9% of the cases, we continue the hearing for a  
220 second meeting. In this case, we closed the hearing and were in the deliberation phase. N.  
221 Faiman said he wrote down his reasoning. B. Spear said given the complexity of the case, the  
222 tremendous amount of information that was passionate and irrelevant, writing things down in  
223 order to come up with a good decision makes sense. J. Stone said he also did a fair amount of  
224 research, made notes, and shared them, but, I spoke them at the meeting. I said what I thought.  
225 That is the way I work. Anything less would say that I wasn't doing the best I can do. What I said  
226 that night I didn't see any legal means of approving that variance. If we rehear it, I still don't see  
227 a legal means to approve the variance. It has to meet the 5 tests, and there were two other legal  
228 impediments.  
229

230 J. Eckstrom said the only thing we should be discussing tonight is the granting of the rehearing. I  
231 have brought my concerns to the Board.  
232

233 The Board discussed when the last time there was a month between when the hearing of  
234 testimony concluded and the deliberation began. They estimated it was at least 10 years ago.  
235 They discussed the difficulties and complexities of this case.  
236

237 **J. Eckstrom MOVED to grant a rehearing for the reasons stated in the letter from J.**  
238 **Eckstrom dated 11/18/19. P. Levesque SECONDED.**  
239

240 Yes is to grant rehearing  
241 J. Eckstrom - yes  
242 B. Spear - no  
243 J. Stone - no  
244 P. Levesque - yes  
245 N. Faiman - no.  
246 Motion is defeated. The Board will not grant a rehearing.  
247 J. Eckstrom thanked the Board for listening. N. Faiman thanked her for sharing her opinion.  
248

249 **J. Eckstrom MOVED to deny the request for rehearing. B. Spear SECONDED.**

250 B. Spear - yes.  
251 J. Stone - yes  
252 N. Faiman - yes  
253 A. Hoar - yes  
254 P. Levesque - no  
255 J. Eckstrom - no.

256

257 8. COMMUNICATIONS AND MISCELLANEOUS

258 The Board received a request for rehearing from the applicants in case #07/09/19 -1. There is no  
259 way to give the request adequate attention since the Board only received it earlier today. The  
260 Board discussed various scheduling options and decided:

261

262 December 17, 2019, at 7:30

263

264 **J. Eckstrom MOVED to have a meeting to entertain a request for a rehearing from the**  
265 **applicants in case #07/09/19 -1on Dec 17, 2019 at 7:30 PM. P. Levesque SECONDED.**

266 Discussion

267

268 The Board reminded everyone this is a public meeting but not public hearing.

269

270 Vote

271 B. Spear - yes  
272 A. Hoar - yes  
273 J. Stone - yes  
274 P. Levesque - yes  
275 N. Faiman - yes  
276 J. Eckstrom - yes

277

278 Note: A. Hoar is a non-recused member who participated in the scheduling vote.

279

280 P. Howd and J. Klinghoffer returned to the Board at 9:34 PM.

281

282 9. SCHEDULING

283 There are three meetings, Feb, March and Sept that have elections scheduled on the same day.

284

285 **J. Klinghoffer MOVED to change the Feb 11, 2020, meeting to Feb 18, 2020, because of the**  
286 **clash with the Pres Primary. P. Levesque SECONDED. All in favor.**

287

288 **J. Klinghoffer MOVED to change the March 10, 2020, meeting to March 17, 2020. A. Hoar**  
289 **SECONDED. All in favor, B. Spear abstained.**

290

291 **J. Klinghoffer MOVED to change the Sept 8, 2020, meeting to Sept 15, 2020. J. Eckstrom**  
292 **SECONDED. All in favor.**

293

294 10. ADJOURN

295 **P. Levesque MOVED to adjourn at 9:43 PM. J. Stone SECONDED. All in Favor.**

296

297 Respectfully submitted by Michele Decoteau, Land Use Administrator