



TOWN OF WILTON  
Zoning Board of Adjustment  
*Approved Minutes*

**DATE:** July 14, 2020  
**TIME:** 7:00 PM  
**PLACE:** Remote  
**PRESENT:** Neil Faiman, Chair; Joanna Eckstrom, Vice-Chair; Jeff Stone; Paul Levesque; Andy Hoar; Peter Howd, Alternate; Judith Klinghoffer, Alternate  
**Absent:**  
**Staff:** Michele Decoteau, Land Use Administrator  
**Attendees:** Tom Hahnl, Kristin Marois, John Marois, Lynne Stone, Lynn Pentler

**1. Preliminaries**

Meeting was opened at 7:35 PM by N. Faiman. He read the Emergency Declaration and the Right to Know information.

Roll call attendance:	A. Hoar – here, alone
P. Howd – here, alone	J. Klinghoffer – here, alone
J. Stone – here, Lynne Stone	N. Faiman – here, Lynn Pentler
P. Levesque – here, alone	

**2. Rehearing**

Case 05/12/20 -1

*The John and Kristen Marois Revocable Trust has appealed a decision of the Wilton Building Inspector that a newly constructed accessory dwelling unit in the existing home at Lot B-39-3, 303 Curtis Farm Road, requires payment of an impact fee pursuant to Article 25 of the Wilton Zoning Ordinance. This appeal was originally denied in a hearing on Tuesday, May 12, 2020.*

*The original application, the request for a rehearing, and all testimony from the May 12, 2020 hearing will be incorporated in the record for the rehearing, and may be considered by the Zoning Board in making its decision. Any relevant new evidence or arguments may be presented at the rehearing. (Case #5/12/20-1).*

N. Faiman opened the Public Hearing by reading the public notice and he reviewed the history of this case. This case is a rehearing without limits on what can be heard.

J. Marois said he was appealing the decision of the Building Inspector to assess Impact Fees on his ADU. He hoped the Board all read the documents he submitted and RSA 674.21.Vd: *When no planning board approval is required, or has been made prior to the adoption or amendment of the impact fee ordinance, impact fees shall be assessed prior to, or as a condition for, the issuance of a building permit....* He said the Impact Fee wasn't assessed until nearly five months after the issuance of the Building Permit.

J. Marois said in the *2017 Guide to ADU law*, it says municipalities cannot impose additional fees on to a house just because it has an ADU. Wilton's Impact fee is set up by dwelling units and should not apply to an ADU.

J. Marois said that he submitted additional court cases. One was from Southern NH Supreme Court and this case spoke about using plain language in understanding Ordinances. He said that a preliminary estimate of an impact fees is not sufficient. J. Marois said there was no documentation of the fee on the building permit.

J. Marois said there was another Supreme Court decision in 2010 that said that when interpreting an ordinance, plain language should be used. While the RSA regulated the town's amount and use of Impact Fees, the RSAs specify procedures for assessing. He said that Wilton's Zoning 25.5.2 mirrors the RSA.

N. Faiman asked if any Board Members had questions. There were none.

N. Faiman asked if there were Public Comments.

T. Hahnl asked what ADU stood for. N. Faiman said it stands for Accessory Dwelling Unit. N. Faiman described the recent Ordinance changes. T. Hahnl asked if he could add one to his house. N. Faiman said yes. T. Hahnl asked when the initial permit was issued for this property. J. Marois said October 2019. T. Hahnl asked if a variance was required for an ADU. N. Faiman said there was no action required by the ZBA under normal circumstances for an ADU. T. Hahnl asked if this was essentially a two family dwelling. N. Faiman said yes. J. Marois said no, it is a primary dwelling with an accessory use. N. Faiman said the Ordinance creates a second dwelling with restrictions on size and number of bedrooms. T. Hahnl said that he was never notified. N. Faiman said that abutters are not typically notified of building permits. M. Decoteau said that the posting requirements are that permits are posted publically at the Post Office and inside at Town Hall.

**J. Eckstrom MOVED to close the Public Hearing. P. Levesque SECONDED.**

Discussion: Hearing none the chair asked for a roll call vote.

Roll call vote

J. Eckstrom – yes

A. Hoar – yes

J. Stone – yes

N. Faiman – yes. The motion carries.

P. Levesque – yes

J. Eckstrom said she believes everything that Mr. Marois said and the biggest concern she had was that he was not adequately informed. The town has taken steps to correct the error. She said she thought the ZBA should reverse the decision.

P. Levesque said he didn't agree. This is a tax and the ZBA doesn't have the authority to give a tax abatement. J. Eckstrom said it is not a tax since it is not based on the value of the project.

J. Klinghoffer said that it's assessment is not a tax. The ZBA has the authority to set it aside.

N. Faiman said the ZBA does have the authority as it was a decision made by the Building Inspector and the ZBA is the correct place to take an appeal of an administrative decision. P.

Levesque said this is Pandora's Box and everyone who has had an impact fee assessed will be asking for an appeal. J. Klinghoffer said that is not the case. Under state law, if they have not appealed within the appeal period, they cannot appeal it now. There isn't an open-ended timeframe on appeal.

The Board discussed the notification of fees and the placement of the notification on the building permit. J. Klinghoffer said that if the person being assessed did not have fair and reasonable notice, it is not a legal assessment. N. Faiman said he sees two issues. First the meaning of assess. This is a reasonable reading of the ordinance is that assessment means having the fee schedule. On the other hand, it is equally reasonable that assessment means sending them the bill. We have been back and forth. The other issue is about fairness. Does the ZBA have the obligation and the authority to waive the valid imposition of the impact fee just because we don't think it was fair.

J. Eckstrom said there wasn't any ambiguity. J. Klinghoffer asked N. Faiman if he believed there was the possibility of inadequate notice. N. Faiman said yes that is possible. He questioned if the court had the authority to overturn a Building Inspector's decision on grounds of interpretation of the ordinance. J. Klinghoffer asked if N. Faiman believed that flat-out unfairness isn't valid grounds for setting aside a decision. N. Faiman said yes.

J. Eckstrom said the ZBA has the authority to make things right. The applicant wasn't fairly noticed. J. Klinghoffer presented a hypothetical example. P. Levesque said that they could go to court or the Select Board. N. Faiman said he was interested in Section 25.10a, which creates additional authority that the ZBA doesn't already have.

N. Faiman discussed case law pertaining to building inspectors giving incorrect information on zoning issues but in this case, *not* giving information. It is very unclear. J. Eckstrom said the Building Inspector has failed to inform every one of the possibility of a fee and it is unfair. The new permit has the simple line that informs people about possible fees. She said that the Ordinance should be rewritten to be understandable by laypeople.

A. Hoar said this is clearly wrong. If it were the only case, that might be different but it is more than one. It almost constitutes a deliberate wrong.

J. Stone said he hasn't changed his opinion. There is a systematic error. The Ordinance expects people to look for information that we expect them to be informed about. That doesn't constitute assessment.

The Board discussed that this was unfair and they felt that they had the authority to overturn the decision.

**A. Hoar MOVED to reopen the Public Hearing. J. Eckstrom SECONDED.**

Roll call vote:

A. Hoar – yes

J. Eckstrom – yes

P. Levesque – yes

J. Stone – yes

N. Faiman – yes. Motion carries.

Discussion. The Board discussed wording.

**J. Eckstrom MOVED to overturn the decision to impose impact fees without notification because it was a manifest injustice that cannot be supported. A. Hoar SECONDED.**

Discussion

J. Eckstrom asked if the Board was overturning our decision. N. Faiman said no, this is overturning the decision of the Building Inspector to impose the impact fee.

Roll call vote:

P. Levesque – no

J. Stone – yes

J. Eckstrom – yes

A. Hoar – yes

N. Faiman – yes. Motion carries.

N. Faiman reminded everyone that this is a new decision and has the standard appeal period.

J. Eckstrom wanted to thank the Building Inspector for making sure this now clearly stated on the Building application. She said we can all do a better job to make things clearer for lay people.

**J. Eckstrom MOVED to defer the minutes to the next meeting.**

**P. Levesque SECONDED.**

Roll call vote:

P. Levesque – yes

P. Howd – no

J. Stone – abstain

J. Eckstrom – yes

J. Klinghoffer - yes

A. Hoar – no

N. Faiman – yes. Motion carries.

### **3. Other Business**

The Board discussed the lack of clarity of this ordinance and if they could ask the Planning Board to review the language.

The Board discussed needing input from Town Counsel.

**A. Hoar MOVED to ask Town Counsel that given the ZBA’s decision on July 14 to overturn of the imposition of Impact Fees in the Marois case (#05/12/20-1), and given that the ZBA denied an appeal based on virtually identical facts in 2016 (the Raney case, #12/13/16-1, for which no rehearing was requested), does the Board have any authority to reopen, review, or reconsider the decision in the 2016 case? J. Eckstrom SECONDED.**

Roll call vote:

P. Levesque – yes

P. Howd – abstain

J. Stone – yes

J. Eckstrom – yes

J. Klinghoffer - yes

A. Hoar – yes

N. Faiman – yes. Motion carries.

### **4. Adjourn**

**J. Eckstrom MOVED to adjourn at 8:44 PM. P. Levesque SECONDED.**

Roll call vote:

J. Eckstrom – yes

A. Hoar – yes

J. Klinghoffer – yes

P. Levesque – yes

J. Stone – yes

P. Howd – yes

N. Faiman - yes. Motion carries.

Respectfully submitted by Michele Decoteau, Land Use Administrator

Approved on 08.11.20

