



TOWN OF WILTON ZONING BOARD OF ADJUSTMENT  
*Draft Minutes*

7 **DATE:** May 11, 2021  
8 **TIME:** 7:30 PM  
9 **PLACE:** Remote!  
10 **BOARD:** Neil Faiman (Chair), Joanna Eckstrom (Vice-chair), Jeff Stone, Andy Hoar, Paul  
11 Levesque, Judith Klinghoffer (Alternate), Peter Howd (Alternate)  
12 **Staff:** Michele Decoteau, Land Use Administrator  
13 **Attendees:** Matt Bangert, Laurie Bourgoine, Andy Burnes, Dan Dillon, Dawson Gay (Building  
14 Inspector), Gail Hoar, Kenny Lehtonen (Applicant), Shannon Linn, Debra Munoz,  
15 Nikko O'Neill (Applicant's Representative), Lynn Pentler, Jon Rokeh (Applicant's  
16 Representative), Daniel Ross, Joan Ross, Ashely Saari, Mary Ann Shea (Cemetery  
17 Trustee), Lynne Stone, Karon Walker, Mike Wright, Tim Wylie  
18

19 **I) Call to order by the Chairperson**

20 N. Faiman opened the meeting at 7:36 PM. He read the emergency declaration and the rules of  
21 procedure.  
22

23 **Roll call attendance**

24 N. Faiman – here, with Lynn Pentler  
25 J. Eckstrom – here, alone  
26 J. Klinghoffer – here, alone  
27 P. Howd – here, alone  
28 A. Hoar – here, alone  
29 P. Levesque – here, alone  
30 J. Stone – here, with Lynne Stone  
31

32 Elections

33 **J. Eckstrom MOVED to nominate N. Faiman for Chair. A. Hoar SECONDED.**

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

35 Roll call vote:

36 P. Howd – aye

37 J. Eckstrom – aye

38 P. Levesque – aye

39 J. Stone – aye

40 A. Hoar – aye

41 N. Faiman – abstain

42 J. Klinghoffer - aye. Motion carried.  
43

44 **P. Levesque MOVED to nominate J. Eckstrom as Vice-Chair. J. Stone SECONDED.**

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

46 Roll call vote:

47 P. Howd – aye  
48 J. Eckstrom – abstain  
49 P. Levesque – aye  
50 J. Stone – aye  
51 A. Hoar – aye  
52 N. Faiman – aye  
53 J. Klinghoffer - aye. Motion carried.  
54

55 Building Inspector

56 Dawson Gay, the new Building Inspector introduced himself.  
57

58 **2) Public hearings continued from previous meetings**

59 *Case #05/11/21- 1 — Isaac Frye Holdings*

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60 N. Faiman opened the public hearing by reading the public notice and reviewing the rules of  
61 procedure.  
62

63 A. Hoar recused himself from the case. Voting members for the case will be: J. Eckstrom, N.  
64 Faiman, P. Levesque, J. Stone, and alternate P. Howd.  
65

66 J. Rokeh, the applicant’s representative, said that this is gravel removal that is incidental to  
67 construction of a single family house. He said the time frame for this would a complete house in  
68 six months with three months of that being excavation.  
69

70 The question was ask how many feet of material was expected to be removed. J. Rokeh said  
71 quite a bit of material would be removed.  
72

73 The question was asked where the excavated material would end up- was it going to be used  
74 on site. J. Rokeh said that the material would have to be removed from the site.  
75

76 The question was asked about how much material would be removed. J. Rokeh said that that  
77 the current slope would be moved back about 30 feet. He said it would take about 3 months  
78 to get this done. The Board asked for the amount to be quantified. J. Rokeh said about 25,000  
79 yards.  
80

81 The Board ask about reclamation. J. Rokeh said that in order to get a Certificate of Occupancy,  
82 you need to have the lot loamed and seeded so that would be the reclamation.  
83

84 The Board asked about the site plan provided. The applicant provided a septic plan and this not  
85 only doesn’t show the entire lot, it doesn’t show the before and after conditions. J. Rokeh said  
86 that there was a previous application to the town on this lot and that would show the before  
87 conditions.  
88

89 K. Lehtonen said that the timeframe for the excavation would be 6-9 months followed by 3-4  
90 months of house construction.

91  
92 The question was asked about blasting. K. Lehtonen said no blasting, just large machines.

93  
94 The question was asked about how much material had been removed so far from the site. K.  
95 Lehtonen said that 25-35,000 cubic yards of material had been removed.

96  
97 The Board requested a site walk. K. Lehtonen agreed.

98  
99 The Board discussed the question if a variance is granted, would this pre-empt the Planning  
100 Board's authority? The applicant had applied for a variance as if they were excavating exclusively  
101 incidentally to construction of a single family house.

102  
103 The Board discussed what was needed for a site plan that could be used for making a decision.  
104 At a minimum, the entire site needs to be shown, the contours before and after excavations,  
105 and information on number of trucks/timing of trucks.

106  
107 The Chair opened the discussion for public comment.

108 G. Hoar asked how many cubic yards of material have been removed and how much more  
109 gravel needs to be removed? K. Lehtonen said 25 to 35,000 cubic yards is in addition to what  
110 has already been removed. He said he removed between 1500 to 2200 cubic yards but he said  
111 the material was used on another job site so he didn't track it. If the Board wanted to track  
112 the material from here on out, K. Lehtonen said he could set up a system. She asked how many  
113 truck loads that would be. K. Lehtonen said that 17 to 18 yards fit in a truck.

114  
115 M. Bangert said he calculated that the amount of material removed and it is closer to 5,000  
116 yards of material already removed. This application has no right to be heard again – it has  
117 already been adjudicated. Nothing has changed in the law or the application. This is the third  
118 time that this has been done. M. Bangert said that the owner was well aware of the history and  
119 the limitations on the site. He said that as an experienced builder, the applicant should have  
120 realized he needed to go before the planning board before he removed gravel. This has eroded  
121 the confidence the neighborhood had in the Town. The entrance to the property is dangerous  
122 with steep slopes and large boulders.

123  
124 M. Wright asked if there were maximum amounts of material that could be removed from a  
125 residential site. This proposal is to remove 70 times more material than is allowed. He also  
126 expressed concern about the number of trucks that will be coming and going from a residential  
127 site. This will impact both this summer and next summer with constant traffic. M. Wright was  
128 concerned about the impact of the heavy trucks on the road.

129  
130 A. Burnes read his letter (attached).

131

132 T. Wiley asked about the commercial value of the material removed and the estimated value of  
133 the house. K. Lehtonen said the material wasn't sold, it was used on another job in town so no  
134 money changed hands. He expected to sell the house on this lot for about \$500,000.

135  
136 A. Hoar expressed concern about the removal of material without a building permit.

137  
138 S. Linn Boggs had a number of concerns. First she said that even if no money was exchanged,  
139 there was still a value to the material removed. She estimated that the fill would cost \$15 -  
140 \$30/yard and that this should be researched and referenced. This is commercial excavation.  
141 Second, she said that this excavation is in violation of the noise standards. Finally, she said that  
142 the deed, that the applicant signed, said that there could be no excavation on the lot.

143  
144 K. Lehtonen said it was common to get a driveway permit before a house permit so that the lot  
145 can be logged. He said that his company ceased all work when they received the Cease and  
146 Desist which is why the slopes have not been addressed. He said he added caution tape but  
147 cannot do more.

148  
149 M. Bangert said that if the applicant were to follow the state RSAs for excavations, some of the  
150 slopes he would have to maintain would be in excess of 60 feet long and over the property line.  
151 He said that there is commercial value to the material excavated.

152  
153 G. Hoar noted that there was a timbering permit and wetlands permit visible on a nearby lot  
154 that is preparing for a single family house to be built. There were no permits visible at this site.  
155  
156 There were a number of abutters who had comments regarding why the excavation happened  
157 and the Board said that was not part of the application before the ZBA.

158  
159 S. Linn Boggs had two comments. She asked about severability and she asked how this  
160 excavation is not already contrary to public interest.

161  
162 D. Dillion said he was the primary abutter in this case and his patience was wearing thin. He  
163 thought this should be broken into two projects: the driveway and the rest of the lot. This is  
164 affecting the property values of his lot and all the others. The driveway has gone awry. He  
165 expressed that he felt shut out of the process because doesn't have a computer.

166  
167 A. Hoar said he took exception to the fact previous history doesn't matter in this case. When a  
168 variance is given, there are restrictions quite often and there is an element of trust. The Town  
169 has to trust people to follow the restrictions. From the actions he has seen recently, he does  
170 not believe the applicant and his team are trustworthy people.

171  
172 M. Bangert expressed concern about the ZBA usurping the Planning Board authority to regulate  
173 excavations. He said that the ZBA was beyond their authority.

174  
175 D. Ross said he was concerned about the aquifer and an excavation taking place on a sensitive  
176 area. K. Lehtonen said that the aquifer protection district is only over a portion of the driveway

177 and wetlands are only on the back corner of the property. They were not going to be working  
178 over the aquifer and had marked off the wetlands already.

179

180 J. Ross said that this is not the first house that Mr. Lehtonen has built in Wilton, he should  
181 know the Ordinance.

182

183 M. Bangert said that ignorance is no excuse for breaking the law. The applicant should have  
184 read or understood the deed and plan. This is more than a driveway and the work shows  
185 blatant disregard for the rules. Goes to severability.

186

187 S. Linn Boggs asked about where the test pits were dug. K. Lehtonen said the test pits were dug  
188 about 8 feet deep and not close to the seasonal high water levels.

189

190 The Board discussed what would be needed for a site plan to help them make a decision. The  
191 Board suggested reviewing the Excavation Site Plan Regulations as a place to start. They Board  
192 wanted a plan that showed the whole lot, the before and after excavation contours, and had  
193 more information.

194

195 There was concern raised about trucks and which direction they would be traveling and on  
196 which roads.

197

198 The Board discussed a Site Walk.

199

200 **J. Eckstrom MOVED to have a site walk on June 5, 2021, at 9:00 AM with a rain**  
201 **date of June 6, 2021 at 2:00 PM. P. Howd SECONDED.**

202 Discussion: Hearing none, the chair called for a roll call vote.

203 N. Faiman – aye

204 P. Levesque – aye

205 J. Eckstrom – aye

206 J. Klinghoffer – aye

207 P. Howd – aye

208 J. Stone – aye. Motion carried.

209

210 J. Eckstrom MOVED to continue the case to June 8, 2021 at 7:30 PM. J. Stone SECONDED.

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

212 N. Faiman – aye

213 P. Levesque – aye

214 J. Eckstrom – aye

215 J. Klinghoffer – aye

216 P. Howd – aye

217 J. Stone – aye. Motion carried.

218

219 P. Levesque MOVED to close the public hearing. P. Howd SECONDED.

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

221 N. Faiman – aye

222 P. Levesque – aye

223 J. Eckstrom – aye  
224 J. Klinghoffer – aye  
225 P. Howd – aye  
226 J. Stone – aye. Motion carried.

227  
228 **3) Other Business**

229 A. Hoar **MOVED** to post pone the minutes and discussion of fees. P. Levesque **SECONDED**.  
230 Discussion: Hearing none the chair asked for a roll call vote.

231 N. Faiman – aye  
232 P. Levesque – aye  
233 J. Eckstrom – aye  
234 J. Klinghoffer – aye  
235 P. Howd – aye  
236 J. Stone – aye. Motion carried.

237  
238 **4) Adjournment**

239 **J. Eckstrom MOVED to adjourn at 10:17 PM. P. Levesque SECONDED.**

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

241 N. Faiman – aye  
242 P. Levesque – aye  
243 J. Eckstrom – aye  
244 J. Klinghoffer – aye  
245 P. Howd – aye  
246 J. Stone – aye. Motion carried.

247  
248 Respectfully submitted by Michele Decoteau, Land Use Administrator

249  
250 Approved on XX.XX.XX

251 05.11.21.LetterfromAndyBurnes

252

253 My name is Andy Burnes and I live at 202 Wilson Rd. My property abuts the IFH property along my  
254 southern border.

255

256 As I understand it there are five conditions that must be satisfied in order for this board to consider  
257 granting this variance.

258

259 Because these five conditions must be satisfied, and it is the applicant who seeks relief through the  
260 agency of this variance, the applicant should be compelled to prove, or provide sufficiently persuasive  
261 evidence, in support of the claims made to establish satisfaction of each condition. The applicant assumes  
262 this burden in applying for this variance.

263

264 Looking at the applicants answers to these five conditions, I see some issues that simply don't make  
265 sense. Or, at the very least, do not provide sufficient evidence to support the claims made.

266

267 I) "Granting the variance would not be contrary to the public interest."

268

269 IFH has already dug down, in places, 40 to 50 feet below the surface in the Aquifer Protection Zone.  
270 And more excavation is planned.

271

272 These aquifer protection zones exist because of their importance as a fundamental human need.  
273 Aquifers are complex and delicate, and they require strict regulation because of their importance and  
274 fragility. As such, any potential harm to the aquifer should be considered as contrary to the public  
275 interest.

276

277 The applicant's answer completely fails to treat the issue of Aquifer disturbance, and the resultant  
278 possible damage the proposed, and current, excavation could, or has already, caused. Not a single  
279 word.

280

281 New Hampshire 155-E provides for regulators to establish and include reasonable provisions for the  
282 protection of water resources.

283

284 And in Wilton zoning ordinance "Aquifer Protection District" section 12.4 "prohibitive uses"  
285 paragraph "I" indicates that excavation is prohibited if:

286

287 I) minimum depth to groundwater is 10 feet

288

289 There are most likely other ordinances that govern the interaction between excavations and Aquifers  
290 that more directly address the preservation of the functioning and water quality of the Aquifer, but I  
291 unable to find them.

292

293 Nonetheless it seems that certain questions need to be answered before a claim to uphold the integrity  
294 and functioning of the aquifer, and thus the public interest, can properly be made.

295

296 As far as I know no Hydro-geological survey indicating the depth to ground water at the new elevation,  
297 no documentation establishing that no harmful disturbance to the aquifer function and water quality

298 have taken place, have been submitted. Absolutely no evidence is provided to satisfy the burden of  
299 establishing the current, and future, excavation is not harmful to the aquifer and therefore not contrary  
300 to the public interest.

301 Condition 2) the spirit of the ordinance is observed.

302  
303 The spirit of the ordinance is to protect the community from builders coming into Wilton and  
304 commencing operations, absent of any regulatory constraint, and to prevent the substantial harm these  
305 unregulated activities are likely to cause. That is the spirit and intent of the ordinance.

306

307 And that is exactly what has happened in this case. The very situation that the spirit and intent of this  
308 ordinance serves to protect against is exactly what IFH has done.

309

310 IFH's decision to begin excavation operations without proper permitting, without filing a site plan, or  
311 any attempts towards regulatory compliance, constitutes the most direct and egregious violation of the  
312 spirit and intent of the ordinance that is possible. It is a slap in the face to all assembled here who have  
313 invested their time, their resources, and their deliberate thoughtfulness to help ensure the safety and  
314 prosperity of this community. It's a hard slap. It makes inseparable the previous violations and this  
315 application for a variance.

316

317 As such no rightful claim to observance of the spirit and Intent of the ordinance, as is required to grant  
318 this variance, can possibly be made.

319

320 Condition 3) Substantial Justice is done.

321

322 Here the applicant writes "substantial justice is done when the loss of denying the variance is greater  
323 than the gain of the public by strictly enforcing the ordinance."

324

325 Oddly enough, the applicant has created the very condition that makes possible the significant gain to  
326 the public denying this variance would provide. IFH's decision to commence operations, willfully and  
327 with reasonable foreknowledge of violating, and without any regulatory compliance, will be observed by  
328 others contemplating doing business in Wilton. IFH's ability to operate unlawfully with impunity, such as  
329 the granting of this variance will partially infer, will set a dangerous precedent. That being: That it is in  
330 your best interest, when building in Wilton, to ask for forgiveness, rather than permission. The denying  
331 of this variance sends a clear message indicating the ZBA's commitment to enforcement, and will  
332 actively deter future builders, who may demonstrate the same disregard for Wilton and the ordinances  
333 designed to protect the community. This resulting enforcement/deterrent paradigm will create a  
334 significant public gain that is certainly greater than the loss of denying the variance. In accordance with  
335 the applicant's own calculus for substantial justice to be done, If the demonstrated gain to the public is  
336 greater than the loss of denying the variance this application must be denied.

337

338 5) denying the variance will result in unnecessary hardship.

339

340 Chapter 674:33 Powers of the ZBA

341 I:B:2 provides:

342 "An unnecessary hardship will be deemed to exist if, and only if, or when to specific conditions of the  
343 property they distinguish it from other properties in the area, the property cannot be reasonably use in  
344 strict conformance to the ordinance."



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Other than a loose description of the lot topography, the applicant has offered no proof, no topographical maps, no engineering surveys, or any other form of persuasive evidence that establishes:

- 1) That there were no alternative suitable building sites on this 8+ acre lot that could have facilitated building a single-family house while maintaining strict accordance to the ordinance.
- 2) That there was no possibility that on-site materials could have been re-distributed in such a way as to create a serviceable building site.
- 3) That there was no alternative to the removal of excavated materials that would have been suitable

IFH has offered no evidence whatsoever that establishes that the site cannot be reasonably used in strict conformance to the ordinance, and therefore has not met the burden of claiming unnecessary hardship. For this reason they failed to satisfy the unnecessary hardship condition contained in the application, therefore it must be rejected.

And while we can speculate as to why IFH chose to behave in the way it did, we do know some facts:

IFH knew excavation was prohibited - it's in the deed!

IFH knew there was valuable gravel on site that could not be lawfully mined.

IFH commenced mining the gravel without any regulatory oversight or accountability.

IFH removed approx. 3000yd<sup>3</sup> that was used at another commercial site.

IFH benefitted from the materials already removed, and stands to benefit from the planned continuation of removed materials in the future.

These are facts. And taken together with what has transpired on Lot F/3-2 it begins to look like there are more nefarious motivations for how things unfolded.

I believe that it IFH's intentional strategy to commence unlawful and unregulated removal of these valuable materials, and to remove as much as possible before the appropriate regulatory agency could respond. They wanted to find out what they could get away with and how much they could remove in the process. It feels to me like we are being scammed, like we are being hoodwinked, if that is a nicer way to put it.

I know that this forgiveness-rather-than-permission approach can not be acceptable to anyone present. I know that this approach should not be sanctioned by our beloved ZBA. This cannot be an approach that is encouraged by granting this variance. Because if you do, this board, and this community, will become far more vulnerable to the reoccurrence of unlawful excavations moving forward. Let's all work together to ensure that this cannot happen...again.