

**TOWN OF NEW BOSTON
NEW BOSTON ZONING BOARD OF ADJUSTMENT
Minutes of 2014
May 20, 2014**

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The meeting was called to order at 7:00 p.m. by Zoning Board of Adjustment Chairman David Craig. Present were regular members Robert Todd, Phil Consolini, Harry Piper, and alternate member Ken Clinton. Also present were Planning Coordinator Nic Strong and Zoning Board of Adjustment Clerk Valerie Diaz.

Present in the audience for all or part of the meeting were Benjamin Heselton, Daniel Muller, Esq., Earl Sandford, P.E., Building Inspector/Code Enforcement Officer Ed Hunter, Kim Neesen, Clay Drew, Barbara Stewart, Tom Noel and Vinnie Iacozzi.

**THIBEAULT SAND AND GRAVEL, LLC (OWNER)
BENJAMIN HESELTON (APPLICANT)**

Application for variance

Location: Parker Road

Tax Map/Lot #3/57

Residential-Agricultural "R-A" District

The Chairman read the public hearing notice. He noted that this was the second time this application had submitted to the Board. He explained that the Board had raised some concerns during the last hearing and the applicant withdrew their application without prejudice. Barbara Stewart asked if the first scheduled hearing of February 18, 2014, had been cancelled due to a snowstorm. The Chairman confirmed that the hearing had been cancelled and added that it had been rescheduled for March 18, 2014. Clay Drew asked how a meeting could be held without inviting all of the abutters. The Chairman stated that the abutters had been notified. Clay Drew disagreed. The Chairman explained that it was a moot point as the application was withdrawn and all abutters were formally noticed for this hearing. Barbara Stewart and Clay Drew acknowledged that they had received formal notice to this evening's hearing.

The Chairman advised that the applicant would speak to the application, Board members would ask questions, and then directly noticed abutters would be given an opportunity to ask questions and/or raise concerns. He asked that the abutters direct their question to the Board members and not to the applicant.

Dan Muller, Esq., of Cronin, Bisson & Zalinsky, P.C., was present to speak on behalf of the applicant. He indicated that Earl Sandford, P.E., was also present to address one of the issues raised at the last hearing.

Dan Muller, Esq., stated that Benjamin Heselton operated a landscaping company and he was looking to lease property located on Parker Road, owned by Thibeault Sand and Gravel, LLC, for his business. He explained that the site would be used to store landscaping materials, i.e., stone and loam, and that would be brought onto the property. He indicated that the only material that would be processed on the property was bark mulch. He stated that the applicant intended to locate the tub grinder in the middle of several berms on the property. He explained that the bark mulch would be processed and dropped to a hill below the tub grinder location. He further explained that the bark mulch would be dyed black, brown or red. He advised that dye was non-flammable and was a

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water based colorant. He noted that the dye was not toxic to animals or plants and it was not subject to any environmental restrictions per OSHA regulations. He stated that the dye was not defined as a hazardous waste under [RICRA].

Dan Muller, Esq., advised that the proposed hours of operation were Monday through Friday, 7:00 a.m. to 5:00 p.m., Saturday, 8:00 a.m. to 12:00 p.m. for pick-up and delivery of bark mulch only.

Dan Muller, Esq., noted that the applicant's customers consisted of home owners and other landscapers. He explained that the majority of the traffic traveling to and from the site would be pick-up trucks and one-ton pick-up trucks. He continued that the applicant anticipated an average of ten to twenty trips per day.

Dan Muller, Esq., indicated that the applicant would have a one-ton truck, loader, tub grinder, bobcat and a truck that was slightly larger than the one-ton truck onsite. He pointed out that the applicant hoped to grow his business and intended on purchasing a larger truck in the future in order to reduce the number of trips for deliveries.

Dan Muller, Esq., stated that the applicant would be the only employee of the operation and he hoped to hire a few employees in the future.

Dan Muller, Esq., advised that the applicant had proposed to have a small trailer onsite to be used as an office. He stated that the applicant also proposed to have some type of security on the property to protect his equipment.

Dan Muller, Esq., noted that the landscaping material would be stored at the site on a seasonal basis. He explained that the peak season was in the spring, went down mid-summer and then peaked again later in the summer.

Dan Muller, Esq., advised that the applicant would be leasing the front five acres of the proposed property. He explained that the applicant would access the property where an existing gate was located.

Dan Muller, Esq., indicated that the previous concern with the reclamation for the property had been resolved. He explained that the applicant had met with Vinnie Iacozzi from Thibeault Sand and Gravel, LLC, as well as the Building Inspector/Code Enforcement Officer and it was his understanding that the issue had been resolved.

Dan Muller, Esq., stated that the applicant had been before the Planning Board and reviewed the plan on a preliminary basis. He indicated that minor changes that had been made were based on the input from the Planning Board.

Dan Muller, Esq., addressed public interest and spirit of the ordinance together because under law they were related. He stated that the proposed variance would not alter the essential character of the area. He pointed out that while the area was zoned residential active excavation operations were located directly across the street from the proposed location. He stated that the gravel operations used rock crushing equipment and created noise that was louder than what the applicant was proposing with regard to the tub grinder. He noted that the gravel operations already introduced large trucks on the road and that the applicant would be using smaller trucks.

Dan Muller, Esq., referred to public health, safety and welfare and indicated that the biggest issue was relative to noise. He stated that the applicant had hired Earl Sandford, P.E., to conduct a noise survey; he provided the Board with two copies of the report. He advised that the noise measurement at the closest residence was in the low

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50s. He stated that the Federal Housing and Urban Development, (HUD), had noise standards that ranged from acceptable, not acceptable or potentially acceptable. He continued that HUD's clearly acceptable noise standard for a single family residence was 55 decibels. He pointed out the noise produced from the tub grinder was below the acceptable standard. He noted that Earl Sandford, P.E., was available this evening to answer questions regarding the noise survey. He stated that based on the findings they did not feel that there was a noise issue. He added that the report showed the excavation operations had created noise up to 70 decibels. He reiterated that the noise created by the tub grinder was not as intense as the noise created by the excavation operations and restated that the dye to be used was non-flammable and non-toxic.

Dan Muller, Esq., indicated that wetlands existed on the property and that the applicant would not operate in the wetlands. He stated that all of the business activities would take place outside of the wetlands.

Dan Muller, Esq., stated that the applicant proposed to use a one-ton dump truck on the property as well as a ten-wheeler truck. He reiterated that truck traffic currently existed on the road and that the applicant was not introducing any trucks that were not already there.

Dan Muller, Esq., referred to the substantial justice criteria of the variance and stated that the applicant was trying to expand his business to cover areas that were not currently covered with regard to landscaping materials. He continued that the applicant believed the proposal separated him from other businesses. He stated that following the last hearing he had made an inquiry as to whether this operation could be allowed at any other locations in Town as a matter of right and was told no. He commented that any proposed location for this operation would require a variance and the denial of a variance for this application would prevent the applicant from expanding his business and distinguishing himself from other landscapers. He pointed out that the applicant was a lifelong resident of New Boston and was trying to keep his business in Town.

Dan Muller, Esq., did not believe that there was anything in this particular case that would change the balance in favor of public interest. He noted that the proposed property that was intended for excavation and in an area with other active excavation operations. He added that the applicant was not changing or introducing anything that was not already in the area. He stated that for the reasons he just listed he also did not believe that the granting of the variance would diminish surrounding property values. He noted that the proposed property was over 40 acres and had buffers or berms that made it particularly appropriate for the proposed use.

Dan Muller, Esq., referenced the hardship criteria of the variance and indicated that the proposed property was large and the topography was particularly appropriate for the proposed use because it had natural berms and hills that would absorb the noise. He noted that the area to be used on the property could only be seen from the road. He stated that the only straight line of sight was to the road and into the gravel operation located across the street.

Dan Muller, Esq., referenced the reasonableness criteria of the variance and commented that the proposed operation was less intense than the use across the street. He went on to say that the proposed business was a small scale operation. He noted that

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the applicant did not intend to build any commercial structures and that the office space would be inside a portable trailer.

Dan Muller, Esq., believed that the variance should be granted and he offered to answer questions.

Harry Piper asked the Building Inspector/Code Enforcement Officer if there were any land use regulation violations, state or municipal, on record. The Building Inspector/Code Enforcement Officer answered that there was a gravel operation that is not currently permitted to operate and needed to be reclaimed. Harry Piper asked for confirmation that the property was currently in violation of the Zoning Ordinance. The Building Inspector/Code Enforcement Officer answered yes. Harry Piper commented that because the lot was illegal the Board could not grant a variance. The Chairman stated that the applicant was getting caught in the middle of the issue with the gravel pit and the Town. He indicated that he was unsure of what was required of the gravel pit and indicated that there seemed to be a difference of opinion on the matter.

The Chairman asked if a Thibeault Sand and Gravel, LLC, representative was present. Vinnie Iacozzi identified himself as the Thibeault Sand and Gravel, LLC, representative. The Chairman suggested that the applicant confer with Vinnie Iacozzi on the matter. Vinnie Iacozzi indicated that they did not need to confer as it was his understanding that the Building Inspector/Code Enforcement Officer had worked this issue out. The Chairman asked for Vinnie Iacozzi to explain what he believed was happening with the property. Vinnie Iacozzi indicated that the property had been purchased in 2006 from Aggregate Industries. He explained that following the purchase of the property it had been determined that the material was unsuitable for use without additional processing. He advised that less than 1,500 yards of material had been removed from the property. He stated that an edge existed that was approximately 14' to 16' in height and approximately 200' long that had been viewed by the Building Inspector/Code Enforcement Officer as well as the applicant. He advised that the Building Inspector/Code Enforcement Officer had determined that the edge had to be cut back to a 2:1 slope and mulched and seeded. He noted that the cut was the only thing that needed to be done to the property with regard to reclamation. He stated that the Building Inspector/Code Enforcement Officer had agreed that the reclamation requirement could be a condition of the approval of the variance. He stated that the lot was not an illegal lot and was an expired gravel pit that needed to be reclaimed. Harry Piper clarified that the lot was illegal if there was a Zoning Ordinance violation. Vinnie Iacozzi stated that there was no Zoning Ordinance violation. Harry Piper pointed out that the Building Inspector/Code Enforcement Officer had stated that there was a Zoning Ordinance violation. Vinnie Iacozzi advised that the only letter he had received from the Building Inspector/Code Enforcement Officer stated that he needed to reclaim the pit or file for a new permit. The Chairman noted that the Board had heard testimony that the required reclamation for the property had not happened and asked if that information was correct. Vinnie Iacozzi confirmed that the reclamation had not taken place. The Chairman asked if there was formal reclamation plan; the Planning Coordinator provided the Board with the reclamation plan.

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Vinnie Iacozzi indicated that one of the reasons they were holding off on the reclamation was because it would interfere with the applicant's operations. He continued that the reclamation that was being proposed would amend the original reclamation to allow the applicant to operate his business. He advised that the applicant would utilize part of the excavation and the remainder would be reclaimed. The Chairman stated that he was concerned that Mr. Iacozzi wanted to modify the reclamation plan. He asked for confirmation that Mr. Iacozzi had just stated that he wanted to modify the reclamation plan because it would interfere with the proposed business. Vinnie Iacozzi answered no and stated that the applicant would be utilizing part of the open space. The Chairman indicated that he had a procedural concern as he was not certain that the Board had the authority to modify an approved reclamation plan. Vinnie Iacozzi noted that he and the applicant had appeared before the Planning Board with the proposed plan and the Planning Board had no problems with the plan. The Chairman reiterated that he was concerned that the Board did not have the authority to modify the reclamation plan. Dan Muller, Esq., advised that procedurally the Board could attach a condition to the variance that the reclamation plan needed to be modified by the appropriate entity.

Vinnie Iacozzi pointed to the reclamation plan and explained that the excavation that was shown on the plan had never been completed. He explained that because the excavation never took place the reclamation plan could be left exactly as it stands with the addition of the 2:1 slope. Harry Piper asked if the reclamation plan had been approved by the Planning Board. Vinnie Iacozzi answered no. The Planning Coordinator advised that the Board of Selectmen had been the Regulator when the plan had been submitted. The Chairman asked if the reclamation plan had been approved as part of the gravel permitting process. Vinnie Iacozzi answered yes. The Chairman commented that he appreciated Vinnie Iacozzi's position that if the property had not been excavated then it did not need to be reclaimed; however, he was not sure that he wanted to get involved at the Zoning Board level with regard to what obligations needed to be fulfilled. Vinnie Iacozzi stated that if he had not had the representations from Building Inspector/Code Enforcement Officer regarding the reclamation he would have done further engineering. The Chairman asked if Vinnie Iacozzi had said that the reclamation plan needed to be modified. Vinnie Iacozzi indicated that he had misspoken and that in fact the plan did not need to be modified as nothing was ever taken from the site. The Chairman noted that Vinnie Iacozzi had testified that he had removed a small amount of material from the site. Vinnie Iacozzi clarified that they had taken 500 yards or 600 yards of material that had been stockpiled by Aggregate Industries. He went on to say that they had never actually excavated the embankment. The Chairman asked for confirmation that it was Vinnie Iacozzi's position that he did not need to complete the reclamation as outlined in the approved reclamation plan because material was not taken from the site. Vinnie Iacozzi answered confirmed that the Chairman's statement was correct and reiterated that no excavation had occurred.

Harry Piper asked the Planning Coordinator if the reclamation plan had been approved by anybody. The Planning Coordinator explained that the reclamation plan had been accepted by the Board of Selectmen during the permitting process. Harry Piper commented that the Zoning Board could not change the approved reclamation plan. The

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Planning Coordinator added that a bond was in place for the reclamation. The Chairman asked what the appropriate process was for modifying or amending reclamation plans. The Planning Coordinator answered that under the current regulations the gravel pit owner would need to see the Planning Board to make changes. She advised that the Planning Board had spoken with the applicant and told him that the Planning Board would not be comfortable approving a site plan without knowing that the reclamation that needed to be done was completed. She continued that the Planning Board had advised that they would require that reclamation be completed prior to the applicant receiving a permit to operate the business. She noted that the Planning Board did not have an expectation that Thibeault Sand and Gravel, LLC, would submit a gravel operation application or amendment because Thibeault Sand and Gravel, LLC, had no intention on operating as a gravel pit.

Harry Piper believed that the Board had the authority to approve the application with the stipulation that the reclamation plan be modified and approved by the Board of Selectmen or the Planning Board. The Chairman commented that there would be oversight from the Planning Board that would not allow the applicant to operate his business until the reclamation was completed. Vinnie Iacozzi noted that the applicant would be required to have a site plan review with the Planning Board and as such all of the machinery and areas to be used would be clearly marked on his site plan. He stated that the reclamation plan had been accepted by the Board of Selectmen; however, it was never approved because the gravel pit was withdrawn. He further stated that under RSA 155, E, the property was just 100 acres of raw land. The Chairman asked if Vinnie Iacozzi's interpretation was accurate that the property was raw land and Thibeault Sand and Gravel, LLC, did not need to comply with the reclamation plan. The Coordinator explained that the gravel pit had been approved by the Board of Selectmen and information had been filed with the State regarding the small amounts of material that had trickled out every year. She noted that when the Regulator changed from the Board of Selectmen to the Planning Board the permit was not renewed for this pit. She stated that Mr. Iacozzi had attended a few of the Planning Board meetings and had advised that they were not sure what they were going to do with the pit and that they had been working on a few things. She explained that the property was not considered to be "nothing" and was in fact considered to be a gravel pit with a reclamation plan in place. Vinnie Iacozzi agreed with the Planning Coordinator but believed that the reclamation had not been formally approved. He indicated that he still had an obligation to reclaim the pit because it had been an existing pit when it was purchased from Aggregate Industries. The Chairman asked the Planning Coordinator if the Town believed that the reclamation before the Board was the reclamation plan. The Planning Coordinator answered that the Board of Selectmen approved the plan as the reclamation plan and the bond for the reclamation was based on that plan. The Chairman asked if the plan before them was the original reclamation plan from the prior owners. The Planning Coordinator answered that the reclamation plan before the Board had been completed for Thibeault Sand and Gravel, LLC.

Vinnie Iacozzi stated that the north and south pits on Parker Road had been purchased in August of 2006 from Aggregate Industries. He explained that the south pit

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had a different set of permits and grandfathering than the north pit because it had been operating since the 1960s. He stated that when the Planning Board became the Regulator for the Earth Removal Regulations a new set of regulations had been sent out to all of the gravel pit owners and that plan and a similar one for the south pit was filed. He indicated that mining continued in the south pit because it was economically viable; however, it was determined that it was not economically viable to mine in the north pit. He stated that a minimal amount of reclamation was needed for the north pit and for practical purposes the reclamation plan could be used to complete the work. The Chairman asked if Vinnie Iacozzi agreed with the Board that the reclamation plan was the basis for what needed to happen. Vinnie Iacozzi agreed.

The Chairman asked if the Board members had any comments. Harry Piper commented that just because someone changed their mind and did not use the land the way it had been approved to be used did not negate their responsibility to do certain things that had been agreed upon. Vinnie Iacozzi agreed with Harry Piper and indicated that he was only trying to explain that he could not create a flat piece of property as shown in the reclamation plan as the excavation of a million yards of material had never happened. He went on to say that the reclamation plan could only be implemented to the extent of the excavation that had occurred. The Chairman explained that the Board was initially concerned that the lot was not in compliance and rather than bringing it into compliance the lease to someone else created a convenient way to duck the reclamation responsibilities. He asked if the applicant and owner would be okay with the Board requiring that reclamation be completed as a condition of the variance. Dan Muller, Esq., answered yes and they understood that it would have to be completed prior to the issuance of a Certificate to Operate. He noted that the Planning Board had also indicated that they would create the same condition.

The Chairman invited the applicant to share his proposed plan; Benjamin Heselton showed the Board his proposed plan and pointed out the locations of a paved apron, gate, office trailer, tub grinder, colored mulch storage, loam storage and stone storage. The Chairman asked if the dotted line on the plan represented a fence. Benjamin Heselton answered no and indicated that the property was only gated. The Chairman asked if the applicant intended on installing fencing. Benjamin Heselton answered no indicated that he would install cameras for security purposes.

The Chairman noted that abutters had previously expressed concern about the potential toxicity and ground water contamination associated with the mulch dye. He what was contained in the dye. Dan Muller, Esq., answered that the dye was a water based colorant and was manufactured by TH Glenn & Company. He reiterated that the dye was not toxic to animals or plants, it was not subject to any environmental restrictions per OSHA and it was not defined as a hazardous waste.

The Chairman asked for the size of the one-ton truck. Dan Muller, Esq., explained that the one-ton truck was larger than a pick-up truck and described it as a small dump truck. Bob Todd added that the one-ton truck had six wheels. Benjamin Heselton indicated that the one-ton trucks would make-up 70% of the traffic to the property.

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The Chairman stated that Dan Muller, Esq., had testified that this business could not be operated anywhere in Town as of right. Dan Muller, Esq., confirmed the Chairman's statement and explained that he had inquired about this following the last hearing and the Planning Coordinator had advised that the proposed business was not an allowed use anywhere in Town. The Chairman asked if the proposed business could be zoned Commercial. The Planning Coordinator indicated that the Commercial District had a list of uses in the Zoning Ordinance and the proposed use did not match any the allowed uses listed. She explained that the proposed use had not been envisioned at the time the Zoning Ordinance was put together.

Harry Piper asked the Building Inspector/Code Enforcement Officer for his comfort level with regard to the legality or illegality of the lot. The Building Inspector/Code Enforcement Officer answered that he was comfortable with the proposed use operating at the property as long as the Zoning Board of Adjustment and the Planning Board make the reclamation a condition of approval. The Chairman asked if the reclamation needed to be completed to the satisfaction of the Planning Board or the Board of Selectmen. Harry Piper answered that it could be required that the reclamation be completed to both the Planning Board and Board of Selectmen's satisfaction. The Chairman asked who was responsible for determining that the reclamation had been completed. The Building Inspector/Code Enforcement Officer indicated that he was responsible for determining that the reclamation was completed. The Chairman asked if the Building Inspector/Code Enforcement Officer and the Planning Board were clear on the requirements for the reclamation. The Building Inspector/Code Enforcement Officer answered that he was clear on the requirements based on the Earth Removal Regulations. He explained that Mr. Iacozzi's statements that the reclamation plan was not totally accurate were correct because the material had not been excavated. He continued that the slopes that were too steep needed to be evened out and stabilized. He believed that the stabilization could easily be accomplished and needed to be completed before the business could operate.

Harry Piper asked what the status of the reclamation would be if the applicant was denied the variance. The Building Inspector/Code Enforcement Officer answered that the reclamation needed to be completed regardless of the approval or the denial of the variance. Harry Piper asked what authority dictated that the reclamation needed to be completed. The Building Inspector/Code Enforcement Officer explained that the reclamation needed to be completed in accordance with the Earth Removal Regulations as the property was essentially an abandoned pit. Harry Piper commented that the property was in violation. Vinnie Iacozzi stated that he had advised the Planning Board of the possibility of an alternate use for the property via a letter dated December 2013. He went on to say that the letter indicated that the reclamation would be completed once the plan was either approved or denied. He stated that Thibeault Sand and Gravel, LLC, was obligated to reclaim the pit whether the proposed plan was approved or denied and they fully intended to do so.

The Chairman asked for clarification of what was acceptable with regard to noise. Dan Muller, Esq., explained that different federal agencies set noise standards and he believed the best one from a land use perspective was provided by HUD. He noted that

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HUD looked at what was acceptable in term of outside noise and referenced the Federal HUD Regulations, 24 CFR Part 51. He stated that 65 decibels was considered normally acceptable and fewer than 55 decibels was considered clearly acceptable.

The Chairman asked the Planning Coordinator if road traffic, line of sight, access would be reviewed by the Planning Board during the site plan review process. The Planning Coordinator confirmed that the Planning Board would review the items listed by the Chairman.

The Chairman asked for the proposed hours of operation for the tub grinder. Dan Muller, Esq., advised that the Planning Board had suggested that the tub grinder hours of operation be the same as the rock crushing equipment that operated across the street. He stated that the proposed hours of operation for the tub grinder were Monday through Friday, 8:30 a.m. to 4:30 p.m. He noted that if the applicant had a large order he would begin at the same time as the gravel operations. The Chairman asked for the gravel operations hours of operations. Benjamin Heselton answered that the gravel operations hours of operation were 7:00 a.m. to 4:00 p.m. Dan Muller, Esq., noted that the tub grinder generally would be used two to three days per week. The Chairman asked for confirmation that the Planning Board independently regulated the hours of operation. The Planning Coordinator confirmed that the Planning Board would regulate the hours of operation. Dan Muller, Esq., restated that the proposed hours of operation were based on recommendations from the Planning Board.

Harry Piper asked if the abutters had been notified of the noise study. Earl Sandford, P.E., answered no. Harry Piper commented that notifying the abutters would have been a good thing to do.

The Chairman asked for further comments and/or questions from the Board; there were no further comments or questions.

The Chairman invited directly noticed abutters to ask questions. Barbara Stewart of 220 Riverdale Road asked what equipment was used to complete the noise report and specifically asked if a tub grinder was placed in the pit. Harry Piper answered yes. Barbara Stewart indicated that her overall concern was relative to the noise. She asked if noise would increase if the bank used to buffer sound was going to be reduced in height. She commented that she had lived at her home for forty years and she had said over the years that if a truck driver dropped a dime in the pit she would be able to hear it. She stated that sound carried.

The Chairman invited Earl Sandford, P.E., to speak with regard to the noise report. Earl Sandford, P.E., provided the Board with the meter he used during the testing. The Chairman noted that the conversations that were currently taking place were measuring high 50s and low 60s. Earl Sandford, P.E., added that the further away you are from the noise, the noise dissipated. He referenced Ms. Stewart's question regarding the embankment used as a buffer and explained that he did not anticipate any significant noise changes as the embankment would only be cut back and the top would not change. He explained that line of sight had a huge impact on noise and he was not able to see Ms. Stewart's home from the pit. Barbara Stewart stated that she was not concerned with seeing anything and that she was concerned with the noise. The Chairman explained that an obstruction in the line of sight provided a sound buffer. He asked if there was a direct

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line of sight to any of the surrounding residences. Earl Sandford, P.E., answered that the only direct line of sight was located at the entrance of the property; he noted that readings had been taken at the road.

The Chairman asked Earl Sandford, P.E., to provide some context relative to the noise decibel readings. Earl Sandford, P.E., indicated that the loudest noise in the area was created by the trucks and advised that a diesel truck at 30' created 90 decibels. He added that for a previous study he had recorded decibel readings of 80 when he was 50' away from the rock crusher. Barbara Stewart asked if Earl Sandford, P.E., was discussing a rock crusher or a tub grinder. Earl Sandford, P.E., advised that the rock crusher and tub grinder were very similar. He stated that at 100' away from the rock crusher it produced decibels of 77 and spiked over 80 when stones were dumped into the crusher. He further stated that the rock crusher created more noise than the tub grinder.

The Chairman asked if a tub grinder produced a constant noise when it was in use or intermittent noise. Benjamin Heselton indicated that the motor of the tub grinder created a constant noise. The Chairman commented that constant noise could be tuned out as opposed to sharp, sudden noises that tended to get attention. Benjamin Heselton noted that when he had previously operated the tub grinder many of his neighbors did not realize that it was in operation because of all the activity in the area.

Earl Sandford, P.E., indicated the testing occurred at the closest residence in a location where the least amount of vegetation existed with the best line of sight and advised that the readings he had recorded were between 50 and 53 decibels. He noted that the spike from 50 decibels to 53 decibels occurred when material was put into the grinder. Barbara Stewart asked when the testing had taken place. Earl Sandford, P.E., answered that testing had taken place on May 15, 2014.

Ken Clinton asked if the proposed location of the tub grinder was the best location to mitigate sound leaving the site. Benjamin Heselton answered yes. Earl Sandford, P.E., added that by moving some of the material onsite the sound could be reduced by 10 decibels. Ken Clinton commented that the noise would be heard offsite, however, the noise would not be heard at any level that was more objectionable to what could be going on there as a gravel pit or what otherwise could take place if the property was a residence and the homeowner used a dirt bike.

Benjamin Heselton pointed out that John Neville's trucks currently operated on the roadway and the tub grinder would produce similar noise to the noise the trucks already created.

The Chairman asked if the area where the tub grinder was located during the noise testing was the proposed location of the tub grinder. Benjamin Heselton answered yes.

Earl Sandford, P.E., advised that he looked to other towns in New Hampshire and Maine for noise standards as the Town of New Boston did not have a noise standard. He noted that the Town of Jaffrey had a standard of 60 decibels at the edge of commercial parks, the Town of Durham had a standard of 68 -70 decibels, and the Town of York had a standard of 65 decibels. The Chairman pointed out that the measuring tool had been fluctuating in the low 60s during the discussion.

Tom Noel of 220 Riverdale Road asked if the tub grinder used during noise testing was the tub grinder that the applicant intended on using for his business. Earl

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Sandford, P.E., answered that based on the testimony he was given he believed the tub grinder used during the testing was the tub grinder the applicant intended on using for his business. Tom Noel asked what horsepower the tub grinder used. Benjamin Heselton answered that the tub grinder used 500 horsepower. Tom Noel stated that he had read that the horsepower could range from 200 to 1,200.

Tom Noel referenced the Planning Board minutes of April 8, 2014, and advised that the applicant had acknowledged that the noise from the tub grinder would be "loud". He noted that the variance application represented that there would be "some noise". He believed that that description of "loud" and "some noise" were different. The Chairman indicated that he was not aware of the context of the applicant's statement, but notwithstanding, he pointed out that a very formal study had since been provided with regard to objectionable noise levels.

The Chairman asked if a larger horsepower tub grinder would become incrementally louder. Benjamin Heselton answered that the tub grinders had to meet specific noise requirements at the factory. He advised that the size up from his current tub grinder would allow him to do more but the motor was smaller. Earl Sandford, P.E., added that he had conducted a noise test on a larger horsepower tub grinder and it had been quieter than the applicant's tub grinder. He commented that with the modernization of the tub grinders there had been more shielding for sound. The Chairman asked if the sound level would be six times as loud if six tub grinders were running simultaneously. Earl Sandford, P.E., believed that the noise level would most likely increase by four or five decibels.

Tom Noel asked if the Board could consider requiring additional shielding to the motor of the tub grinder. Earl Sandford, P.E., answered that the shielding could be considered if the tub grinder created noise that was above the acceptable standard threshold. He continued that his report recommended that the possibility of moving material around onsite to create a noise buffer be discussed further with the Planning Board.

Clay Drew of 181 Riverdale Road questioned how the use of a gravel pit could be changed to the use of an industrial park. The Chairman asked for Mr. Drew to clarify what he meant by an industrial park. Clay Drew commented that the Board was starting an industrial park by allowing the applicant's business to operate and believed that additional businesses would be allowed to operate. The Chairman stated that he did not want to speculate about what might come down the road. He noted that a very specific application had been submitted and an argument had been made that this application did not violate the spirit of the Zoning Ordinance as well as the other variance criteria. He explained that the Board looked at each application in isolation as it was presented to the Board. Clay Drew commented that any gravel pit owner could allow anyone in their pit if they wanted to pay the bill. The Chairman clarified that a business could not be allowed to operate without going through the regulatory permitting process. He stated that he was not sure what Mr. Drew was envisioning when he referenced an industrial park and explained that an industrial park was not before the Board this evening.

Clay Drew asked if the applicant would be required to follow the Thibeault Sand and Gravel, LLC, trucking route. The Chairman answered that the Planning Board would

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be involved with determining trucking routes. Clay Drew pointed out that currently the Thibeault Sand and Gravel, LLC, was only allowed to use Parker Road. He asked if the applicant would be required to only use Parker Road. The Chairman believed that the applicant would be allowed to use any public road any way they wanted unless the Planning Board said otherwise. He asked if Mr. Drew had a specific concern with regard to the truck routes. Clay Drew commented that there was enough traffic on Riverdale Road and did not believe more traffic should be added to it. He stated that the Road Agent wanted to tar Riverdale Road because it was too difficult to maintain. He noted that it was a scenic road and more trucks should not be allowed to travel on it. The Chairman asked if Riverdale Road had been designated as a scenic road. Barbara Stewart answered that Riverdale Road was classified as the first scenic road in New Boston in 1974. The Chairman noted that the concern was that the characteristic of the surrounding area was being diminished. Clay Drew believed that property values would also be depreciated. The Chairman asked on what Clay Drew based his opinion that property values would be depreciated. Clay Drew suggested that the Chairman visit Sawyer Industrial Park and listen to Haynes's machines while they were in operation. He stated that one could not stand near the machines without wearing earplugs. The Chairman indicated that he needed Mr. Drew to put his last statement into context as he was unsure what he was speaking about. Clay Drew stated that the applicant's neighbors had shut him down last year from operating the tub grinder at his residence because the neighbors said it sounded like military helicopters landing in their backyards. The Chairman asked if Mr. Drew was aware of the decibel level of a military helicopter. Clay Drew answered that he was unsure. The Chairman asked if Mr. Drew disputed the findings in the noise report. Clay Drew answered that he did dispute the findings as he had been around tub grinders long enough and knew that he would need earplugs to be near it. He stated that when the stone crusher, tub grinders and trucks were in operation he would not be able to answer his telephone at this home. The Chairman invited Mr. Drew to share testimony on why the report was wrong but did not believe speculating was helpful. Earl Sandford, P.E., noted that the closest residence was 500' away without a direct line of sight and that was the reason the decibels were recorded at the levels in the report.

The Chairman noted for the record that Mr. Drew was concerned with noise levels from the tub grinder and truck traffic along Riverdale Road diminishing the neighborhood. Clay Drew added that he was concerned with the dye being used to dye the mulch. He acknowledged that the applicant represented that it was non-toxic but questioned where the dye would go when it rained out. The Chairman noted for the record that Mr. Drew was concerned about potential long-term problems relative to the dye. Dan Muller, Esq., advised that the Planning Board would look at groundwater issues as part of their site plan review.

Kim Neesen of 59 Parker Road advised that her property had previously been referenced as the closest residence to the tub grinder. She asked where the noise test had been conducted; Earl Sandford, P.E., pointed out the location of the testing. Kim Neesen stated that she could see inside the gravel pit from the second floor of her home and questioned what the definition was for "line of sight". She referenced the photograph of page 6 of the noise report and noted that the area between her property and the pit was

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not heavily wooded. She stated that she had major issues with noise. The Chairman asked if the noise level would increase on the second floor. Earl Sandford, P.E., explained that the sound did increase as it traveled higher. He asked if Ms. Neesen if she had seen the tub grinder while it was at the property. Benjamin Heselton noted that it was at the property for three or four days. Kim Neesen indicated that she had no idea the tub grinder was at the property. Earl Sandford, P.E., stated that he could not see her residence from ground level but he was unsure if it was visible from above. The Chairman asked if the noise level would double if there was a direct line of sight that was further away. Earl Sandford, P.E., answered that the sound level would only increase by two or three decibels. He noted that the trees were only at 20% foliage during the testing and as the leaves filled in the sound level would decrease.

Barbara Stewart asked for Earl Sandford, P.E., to describe the decibel increases in terms of one quarter increase in sound, twice as much sound, etc. Earl Sandford, P.E., noted that those descriptions were subjective. He advised that an average home was considered to be at 50 decibels, a vacuum cleaner was 70 decibels, conversational speech was 60 decibels, and normal traffic from 15' away was 80 decibels. He noted that the tub grinder created noise that was less than noise created by normal traffic.

The Chairman asked Earl Sandford, P.E., if Ms. Neesen's noise level would be a little louder from the second floor of her home because of the direct line of sight. Earl Sandford, P.E., answered yes but noted that he could not see the residence from the grinder location. Benjamin Heselton added that he could not see Ms. Neesen's residence when he stood on top of the grinder.

The Chairman asked Ms. Neesen if she had other concerns. Kim Neesen indicated that she was concerned with long-term water and soil issues. She questioned if particles from the tub grinder would blow onto her property as she was situated down wind. Benjamin Heselton stated that the tub grinder was no different than the wood chippers used by Asplundh company. He explained that there was some dust but it stayed within the tub grinder. He noted that he was shredding wood and not creating saw dust.

The Chairman asked for further concerns. Kim Neesen stated Dan Muller, Esq., had represented that there would be no decrease in property value and asked if there was any proof of his representations. The Chairman asked Dan Muller, Esq., how they came to the conclusion that property values would not be decreased. Dan Muller, Esq., explained the operation of the proposed business would not change the area as there were existing gravel pit operations across the street. He continued that the proposed business was on a much smaller scale than the gravel operations. He did not believe it was reasonable to believe that the proposed business would decrease property values given what already existed in the area.

Kim Neesen questioned why the applicant had not proposed to operate his business across the street where the gravel operations were located. The Chairman answered that the Board could not speculate on what other options the applicant had or why he chose this site over any other site. He continued that all the Board could address was the specific proposal that was before the Board this evening. He added that the proposed location was the applicant's personal business decision.

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Earl Sandford, P.E., pointed out that the proposed location was a gravel pit and did have authorization to remove millions of yards of material. He explained that the proposed business was downsizing from what had previously been approved to happen at the property. The Chairman asked if material could be removed from the property if Thibeault Sand and Gravel, LLC, decided not to lease the property to the applicant. The Planning Coordinator answered yes and explained that the owner would need to go through the gravel permitting process first.

Kim Neesen noted that the applicant proposed to have a trailer on the property and asked if the trailer would have a bathroom. Benjamin Heselton advised that port-a-potties would be on the property as he was required by law to have one. Kim Neesen expressed concern over the odor that could be created from the port-a-potty. Benjamin Heselton noted that the Neville and Thibeault pits had port-a-potties onsite. He stated that they were cleaned weekly and waste did not sit them for three months at a time in the boiling heat.

Kim Neesen stated that she was concerned with the potential of fires due to mulch piles becoming too hot. Benjamin Heselton stated that fires are associated with large scale operations and he would only have 10,000 yards to 20,000 yards. He added that the colorant for the mulch contained a fire retardant.

Tom Noel commented that it had been said numerous times this evening that the gravel operation across the street would produce more noise than the tub grinder. He advised that over the last several years he had hardly heard anything from the gravel operation. He stated that occasionally he would hear a muffled clank or clunk for a couple of minutes. He further stated that the noise coming from the tub grinder may indeed be at the level represented in the noise report but he would still hear the constant sound from the engine. Earl Sandford, P.E., asked if noise measurements had been taken from the back side. Earl Sandford, P.E., answered no. Barbara Stewart noted that her home was located higher than the tub grinder location and the sound would rise. Phil Consolini asked if the gravel pit was still in operation. Benjamin Heselton answered yes. Earl Sandford, P.E., added that he had received some good readings from the gravel pit and commented that it was good thing that the abutters were not hearing the noise being created.

The Chairman stated that no one could guarantee a neighborhood in which you could not hear a pin drop. He believed that it was fair game to question if something was obnoxious, was a nuisance being created and would properties be devalued. He noted that there had been pretty thorough testimony on those issues.

The Chairman asked if there was anyone who wanted to be heard that had not been heard; no one wished to be heard.

Phil Consolini asked for the decibel level of a riding lawnmower. Earl Sandford, P.E., answered that in close proximity the decibel level would be 90 to 95 and further away at 100' would probably be 60 decibels.

Bob Todd **MOVED** to approve the application as it had met all the criteria and the motion was contingent upon the Planning Board granting the necessary approvals for reclamation of the existing berm that was said to be flattened. Ken

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Clinton seconded the motion. **Discussion:** Ken Clinton stated that the Planning Board not only had the jurisdiction to have the reclamation requirements be satisfied but also had the jurisdiction to be satisfied with the entire site plan process. He went on to say that the Planning Board could read the minutes of the meeting to hear the concerns of the public who were present to testify. The motion **PASSED** unanimously.

Phil Consolini **MOVED** to adjourn at 8:47 p.m. Ken Clinton seconded the motion and it **PASSED** unanimously.

Respectfully submitted,
Valerie Diaz, Clerk

Minutes Approved: