

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Municipal Building

Monday, September 13, 2021
7 p.m.

In attendance: Chair Bernie Volz, Members, George Lamprey, Karen Ponton and Stephany Marchut Lavallee. Alternate Members Gregory Hime, Dennis Murphy and Timothy Nefores. Vice Chair Jean Meloney and Alternate Anthony Avrutine not in attendance.

Voting Members: Bernie Volz, George Lamprey, Karen Ponton, Stephany Marchut Lavallee, Gregory Hime.

Chair starts the meeting by introducing a new member to the Board, Timothy (Tim) Nefores. Chair also announces that he received the resignation of Susan Patz back in July and wanted to let the Board know with her resignation we still have one open seat.

Chair decides to move to item II on the agenda which is a request for rehearing for Ambrose Bros, Inc and go back to the approval of minutes after the hearings.

I. MINUTES:

Approval of the August 9, 2021 minutes as corrected. Chair asks for a motion. Karen Ponton motions to accept the August 9, 2021 minutes as corrected. Seconded by Stephany Marchut Lavallee. All were in favor of approving the minutes.

II. PUBLIC HEARING –AMENDED SPECIAL EXCEPTION AMBROSE BROS, INC. (227-11, 220-24 & 220-25) Chair provides rules of protocol to all of those in attendance, stating if there is dialogue with the Board it is to go through the Chair. Chair asks for the Clerk to announce the case.

Clerk provides the following information to the Board:

This is an application to **AMMEND A SPECIAL EXCEPTION OF A ZBA DECISION DATED JANUARY 28, 2002** for property located at **120 Daniel Webster Highway** identified under Map and lot numbers **227-11, 220-24 and 220-25**. Applicant Attorney Paul T. Fitzgerald representing property owner Ambrose Bros, Inc.

The original application was received by the Clerk on April 12, 2021 that application was denied by the ZBA on June 14th. The applicant submitted a request for rehearing to the ZBA on July 9th. The request for rehearing was heard by the ZBA on August 9th and the ZBA voted unanimously in favor of granting the rehearing. The new case number for this hearing is assigned as 2021-0913.

Public notice was issued on August 23, 2021 postings at the Municipal Building, Post Office and on the ZBA page of the Town Website. Notice was also published in the Laconia Daily Sun on August 31st. Abutters were notified via certified mail on August 26th, 18 out of the 20 return receipt cards have come back. The Town Office has not received any written or verbal statements from any of the abutters but did receive correspondence from Attorney Fitzgerald on September 9th.

Chair reviews the amendments requested on the application again for the members and those in attendance from the public and turns the hearing over to Attorney Fitzgerald.

Attorney Fitzgerald of Wescott Law for the applicant Ambrose Bros, Inc, the Board already has the application there is no need to go through that again. The good news is, I understand the difference between a rehearing and saying everything twice so we're not going to say it again. You heard a lot of testimony that's all part of the record. You received a substantial amount of information from us in written form of the application and the materials that supported that application upon submission and as your Clerk indicated, you've received additional informational recently on one other point. My understanding of a reading is that we want to place everything in that hearing that goes under motion to consider if the matter moves forward this evening. We hope that it does not move on beyond this evening but we need to plan for that eventuality. The issues we put before you are in two categories, one is procedural and the other is substantive to the application itself.

The procedural issues are spelled out in the application for the motion for rehearing regarding the Boards lack of separating each issue independently and deciding on them independently and from my understanding on that is that you need to create a record that can be reviewed so that each and every decision that you made or make stands or falls on its own. The reviewing authority, which in this case would be the Belknap Superior Court, would need to be able to look at request number one and say ok, here is the Boards discussion on that, here is the Boards decision they reached on that and here is the reason for that. We don't believe that is done and I understand there may be discussion or disagreement with that but our position is that a meaningful record was not created on all three of the different requests and we ask that the Board take that up in the order they are outlined.

The other point we make, which I believe there is substantial case law on this, should the Board decide to reaffirm its prior decisions, which we hope it will not but recognize that's certainly a possibility, it was a 5-0 vote against us. Should the Board decide to reaffirm its decision, we believe you need to come up with a written statement of facts or reasons that support that so once again, a reviewing authority can look at that and determine whether our material written and oral, the testimony from the applicant and those who supported his application as well as those who spoke against it, that record can be reviewed and a determination can be made that record supports or does not support your decisions.

Substantively, we are asking you to review the three **undercutting's** before you. I'm not going to go into those in detail, we've done that already both orally and in writing over the past two sessions. Mr. Ambrose is here we are certainly willing to answer any questions you may have. Ideas or suggestions we are open to that but we have nothing further arguments to make to you this evening. We would hope the abutters had ample opportunity to discuss their concerns and we feel honestly some of the stuff presented to you was a bit **fanciful**, some of it was irrelevant some of it was simply theoretical but they have the opportunity because it's an open public hearing. We don't believe any analogy to a quarry in the country of France has much to do with this application, but we heard that type of testimony. We don't believe that theoretical claims that this type of application may somehow affect the quality of wells or water supply in the area without any evidence or proof merits much in the way of consideration, but we recognize people have the right to bring this up. We believe the evidence Mr. Ambrose provided regarding the noise abatement the amount of noise created and the measurements that had been taken in the past and things along those lines. The one area I would like to significantly discuss and why I submitted the letter to the Board, we felt our argument with the application regarding 155-E was pretty much glossed over. Our view 155-E is the State's view of our statutory control and pre-emption over these types of activities and the local control as the NH Supreme Court pointed out is extremely limited. The Court recognizes that part of 155-E was to promote these types of activities for the exactly the reasons we put into our application being the availability of these aggregates and earth products for construction purposes for roads at reasonable costs both to the State of NH, as the court recognizes and private projects. What we are saying is that municipalities have a limited role compared to the role they might have for other types of development. I'm not saying that someone coming in to build a factory to manufacture some type of equipment because there are not necessarily state statutes that pre-empt that type of activity and the court is state in their opinion that we supplied you in full that this activity is pre-empted and is controlled by the state statute and your role is merely to act within the statute to promote and assist those activities within the regulatory scheme laid out there.

Chair asks if he could interrupt for a moment Attorney Fitzgerald stated he was done.

Chair Bernie Volz, we must put this into perspective, we are not here to set new restrictions on this site this is to alter an to relax existing restrictions. So, your argument about we don't have jurisdiction is countered because these restrictions are already in place, and they have been for 19 years. If you're trying to use this as a case to potentially go to court to get all of the special exception conditions overturned, that is a totally different issue and you're going to do that regardless of what we rule here because you're not going to be happy with the result and if you think you can do that then fine but again, we have to put this in context that these restrictions are in place they have been, I think, pretty much adhered to, for many years so your argument about we don't have jurisdiction basically because of 155-E doesn't hold water because these restrictions are already in place.

Attorney Fitzgerald, two points if I may. One, we are here asking for these restrictions to be relaxed in the confines of our application and we are willing to accept that level of regulation so in that sense we are willing to conceded, if you will, jurisdiction if you want to use that terminology, to the town. You're correct, if we move forward beyond this we will be, and I wasn't going to go here but you raised the point, we will be requesting the 2002 restrictions be lifted completely. That really concludes our presentation, we are willing to answer any questions you might have and certainly willing to respond to on point reasonable abutter comments. We thank the Board for their time and Rob, and I understand this is not easy.

Chair asks if anyone in the audience is in favor of special exception amendments would like to speak? Gregory Hime had a question for Attorney Fitzgerald.

Alternate Member Gregory Hime, the information you provided with your recent letter was a decision from 1996, are you also aware of more recent decisions and aware that the RSA 155-E is still in place and what those other rulings had in relation to that.

Attorney Fitzgerald, I am aware the statute is still in place and certainly we can supply you with the current version if you want, I am not aware of any court rulings that would alter what I've placed in front of you. I'm not trying to be coy with you this just an honest answer to your question.

Chair Bernie Volz, I will point out (Chair shares a document on the monitor) this is dated February 2021 from OSI monthly webinar series and it's all about 155-E. Here it states address excavation and zoning ordinances. Chair reads through the slide (slide contained in this set of minutes for the record). These things are perfectly acceptable for a zoning board to regulate.

Rob Ambrose, I would just like to comment on that, those four criteria that are there were scrutinized by the Board back when Tom (Paquette) first applied and I would like to point out for the Board, in that it does say those criteria were set at the local level it doesn't say that any of the criteria was set forth by the RSA they were all adopted by the town at that time. Even in the RSA it says it shall be granted. Meaning successfully satisfying those four criteria and once you satisfy those you can impose more restriction.

Chair Bernie Volz, the reason this use is by Special Exception is because it should come for review to make sure that all these criteria are met.

Rob Ambrose, I agree yes, those four criteria.

Chair Bernie Volz, yes, those four and they are broad, diminution in property values, reasonable change in the character of the neighborhood.

Rob Ambrose, I agree with that and that criteria was satisfied by the original permittee and it's not a mistake they use the word adjustment "shall" be granted. That's not by mistake so if those four criteria are met it shall be granted, there is no more regulation applied afterwards or restrictions.

Chair Bernie Volz, I disagree with you, the Zoning Board can put conditions on variances and special exceptions.

Rob Ambrose, well I think that is where we don't agree on the RSA because that is what you adopted the RSA for. Which as Attorney Fitzgerald had mentioned, you don't have that kind of RSA if you are running a factory this is a specified industry that only occurs in certain areas, so the town has adopted this RSA.

Chair Bernie Volz, again it says, "shall grant a special exception". We cannot prohibit your operation period, but we can put conditions on those just like we can put conditions on variances and other special exceptions in terms of when they are allowed.

Rob Ambrose, and our point is they must be reasonable conditions that allow a permitted business to operate.

Chair Bernie Volz, well there has been a business operating for many years so. Let's continue, anyone that would like to speak in opposition let us limit it to new information and please state your name and address for the record.

Deb Tall 111 College Rd, we did attend the other meetings regarding new information, I'm focused on the Light Industry zoning label where the quarry is. I looked up how does a quarry work and found the gravel industry provides many important and essential raw materials and so forth. (Deb reads from a document pertaining to how a gravel or quarry functions) This industry uses heavy machinery and equipment, the reason I read that is because I was curious as to what defined light industry and I found at the beginning of the Zoning Ordinances document for the town what I found interesting is the mention that the town uses Meriam Webster Dictionary for their definitions 2012 Edition. Deb reads the definition of light industry from the Meriam Webster Dictionary to the Board and the audience. In reviewing other resources light industry generally refers to small items being manufactured in building that don't take up much space without the need for heavy capital equipment. I think it's weird a quarry would be there in the first place, it's a little bit of an anomaly of history but given that it is there and given that it is restricted, it should stay with restrictions.

Eloise Coudert 81 College Road, I've been a resident of Center Harbor for almost 50 years and my comment is more an emotional level but the reason we moved here is because we love the peace and serenity of the Lakes Region. The quarry has been in operation for many years we can hear it at our house I am wary about allowing an expansion of this operation to take place because I think environmentally, I don't think it's a good idea and I don't believe this would be considered light industry and I don't look forward to more noise and more trucks. In summary I am opposed.

Virginia Welles Tuttle Road, I apologize that I am getting into this meeting somewhat late, but I would like to ask about whether the truck traffic will be going on College Rd and Keyser Rd. or if it's limited to rte. 3.

Chair Bernie Volz, according to what may be a gentlemen's agreement or something the truck traffic for Ambrose should be restricted to rte. 3 and not using College Rd or other roads as a bypass unless the end point is on any of those roads.

Rob Ambrose, College Rd is not a thru road so that effectively make the only heavy truck traffic to the areas you are talking about would be for the end use on that road so someone ordered the material or there was a project happening there. Which I would point out, that would happen regardless of if the pit is there or not. It would just be a larger truck if it was coming from further away.

Virginia Welles, ok that is what I thought thank you. The other question is the number of trucks of seventy-five trips a day, I wanted to know where you park trucks, where the trucks get serviced because I too, am concerned about the environmental implications of the activity on the site whether it travels in the water ways or not. I know you are making the statement that is immaterial and not relevant, but I somewhat think it is.

Rob Ambrose, I'm not making that statement. We follow stricter guidelines than most business we are heavily regulated by the State DES we are held to those standards, and we are inspected annually sometimes more than that. As far as truck maintenance, that doesn't happen there unless it's something that is not preventative. No truck storage there either, the reason we've been able to operate it on the level it is at, which I would say we have not successfully been able to operate, is mainly due to the proximity. I would say there are not many operators in the state that would look to operate at the restricted levels that we have which is why we are here. In Meredith we are right down the street which is where all our preventative maintenance and truck storage is.

Mark Anastasio 121 Keyser Road, has there been any environmental impact report given to the Board? The Attorney referenced people talking about wells being affected there is no evidence of that, but he hasn't provided any evidence that there is not going to be an impact to any of us that live in the area and could be severely impacted by any type of crushing or blasting.

Chair Bernie Volz, no, the Board has not received a report.

Mark Anastasio, so the town has nothing, just going on speculation that there will be no big deal. My other point we are alleviating several hours of operation, but we are not asking for anything in return. I don't know this gentleman, I have nothing against him personally but when I moved into the neighborhood, I did my due diligence I looked and knew there was a quarry nearby looked at the parameters of operation and they purchased

the property knowing those parameters. I purchased my property knowing this, I'm sure other people sitting here did the same thing, we purchased our properties with what was there and understanding we would have to live with that because I don't want to stop this guy from making a living but at what expense to the rest of the community? Are we to sit back and say ok, here is free reign we are going to alleviate you of all of this take a risk on our health and wellbeing of our families and our water quality and just say that it's not a big deal? As there is no environmental report provided by anyone here, we have no idea what problems there may be, it's all just speculation yet we are taking a big risk as residents and not them as business owners in the neighborhood. Thank you.

Gordon Dagnall 180 Keyser Road, I am physically and emotionally affected by the petition because it's going to impact my property value. I don't know who sat down in 2002 and shook hands and smoked the peace pipe or whatever to allow special exemptions in a light industrial area to include mining. They were allowed for a mom-and-pop mining operation. The Ambrose Corporation bought this land with the full knowledge of these special exemptions and for the Zoning Board to say they will take them and change them when they should have never been allowed in the first place. There is no environmental impact study, there is nothing to say that Ambrose Corporation can't sell it to a Wall Street trading company that is going to come in here with eighteen lawyers and do whatever they want. You got threats from a D listed Laconia attorney that is telling you, you can't do this and you can't do that. What are you going to do when you have big time attorneys come here? He wants to be a good neighbor but he wants to change all the rules that we were playing with before.

Chair Bernie Volz, there are rules and regulations the ordinances as they are written, do allow, by Special Exception, gravel pits in the Light Industry/Agricultural Rural Zoning districts.

Gordon Dagnall, and they did that in 2002.

Chair Bernie Volz, no that has been in (refers to Clerk, Clerk responds the ordinance was adopted in 1976 however, after the hearing Clerk reviewed the ordinance adoptions and found the Special Exception for Gravel Pits was adopted in 2001. This Special Exception was adopted at Town Meeting 2001 which was a result of Tom Paquette requesting this activity in the CI Zone).

Gordon Dagnall, ok but the ZBA allowed these special exemptions in 2002 and now they are appealing to you to remove them.

Chair Bernie Volz, well they allowed the operation by special exception with the following conditions.

Gordon Dagnall, they are now asking to remove those conditions and expand on the operation which is considered one of the most pristine places in the country right in between Squam Lake and Lake Winnepesaukee do we need to dig a big huge hole that is only the benefit of the Ambrose Corporation. NH is not lacking in aggregate. I would ask the ZBA please consider this and think about it as it was your own backyard.

Allison Toates, 180 Keyser Road, I do take offense at Attorney Fitzgerald's comment that the abutters concerns are "fanciful and irrelevant" and that our claims are merely theoretical. I have attended all the meetings; I have called the Fire Department when they have blasted, it impacts us every time even with the conditions that have been established. If we are talking about if it will impact our quality of life and our property values, it absolutely does with the restrictions already standing. We understand those are the conditions that were granted and we live with those but we also bought our property in Center Harbor, with the idea we were living in this rural world and we wanted to preserve that. These are not fanciful or irrelevant concerns, these are the monies that we and our neighbors have invested in our properties. We pay property taxes too, we raise our children here, we want to retire or are retired here, I plan on being buried here. This very impactful for the community, for the Meredith community too. The number of people that don't know about this is staggering. This benefits a commercial enterprise that purchased the business with the restrictions standing and to have Attorney Fitzgerald, in effect, threaten if you as a Board don't go along with what they want, which is a complete release of any limitations, that they will take it further. That is just disrespectful and not community friendly. It serves one corporation and one pocket but the rest of us have a right to be heard. Clearly, I'm in opposition of this proposal.

Clerk adds the Town of Meredith does receive notifications for regional impact so I want to make that clear that the Town of Meredith was notified.

Allison Toates, ok I've been talking to neighbors that don't know because no one is going into the Fire Department or the Town Office because a lot of people are still wearing masks. I pulled over neighbors and said

“do you know”. People on the opposite side of Keyser across from the Crosby’s, that neighbor had heard nothing about it and was horrified because she hears the blasting it’s not just the abutters. It’s the entire community that is going to reap the concerns.

Chair Bernie Volz, just to speak to the noticing rules, we can’t notice everyone in town so the noticing rules are being followed which is the abutters get noticed, publications go in the newspaper and so we try to do our due diligence but it does require that the community also do some due diligence to periodically check what is being heard by Boards in the town.

Laura Curran, 88 Keyser Road, we can clearly hear rte. 3 from our home and we are approximately ¼ mile from there. The increase in truck traffic would absolutely affect us without a doubt regardless if there are leaves on the trees or not. For an increase in gravel and what it takes to produce that, we don’t have a lot of wildlife in this area we see some now but I wonder if an increase in production will impact the wildlife in our community. We as humans the responsibility to care for the wildlife in our communities and I think that is something else that needs to be addressed. Thank you.

Julia Byers, 224 College Road, I moved into the area because of the bucolic nature of Squam Lake and Center Harbor. I’m delighted and grateful to be here but also dismayed by hearing more and more about how the environmental issues are extremely important here and how that will be undermined by further heavy industry not light industry. Two more issues, Covid for two years and how that has impacted us and you might have started noticing that more and more people are leaving the cities and moving to lake region areas that means they are moving here because they are healthy and have wildlife and have communities that care about each other. The last area is the mention of reports because environmental reports are extremely important but I take it even further what are the conditions of the trucks, is there any way and I mean this with my head and heart, that we can design better trucks that are lighter that are less polluting and maybe there is a report that can go into what old vehicles use vs. what newer vehicles use are there electric trucks in the future but to keep it where it is, is very limiting. I thank you for your concern including the industry themselves because I think we have all benefited from gravel but under the conditions we are now talking about, I’m glad to be here because it’s bucolic.

Chair asks if Attorney Fitzgerald or Rob Ambrose would like to speak. Rob responds no, Attorney Fitzgerald responds yes.

Attorney Fitzgerald, I didn’t hear a whole lot of new but I did hear a couple of things so I will address those. A point about light industry, the issue of our existence in that zone was long ago and it’s not open for serious discussion at this point as I believe the Board understands.

Chair Bernie Volz, you are there and we have these conditions in place.

Attorney Fitzgerald, the issue regarding the lack of environmental report or impacts, we are here this evening for our third hearing which is now a motion for rehearing. The Board has already voted on the merits of this had the Board wanted or the public wanted, they could have brought forward that issue during one of those hearings. It’s not appropriate now to go back and request that. It wasn’t done, it wasn’t asked for. There are no adverse environmental reports to the Ambrose Corporation that are on file with the town. As Mr. Ambrose has stated, he is heavily regulated by both State and Federal Governments. This is an expansion of existing uses not a whole new use that might create environmental issues or anything along those lines. Regarding environmentally friendly vehicles etc., that obviously beyond the purview of this discussion this evening and not a burden to place on Ambrose Bros., to come up with new technology. Those are the only issues I can think of that were not dealt with exhaustively previously.

Gordon Dagnall, in regards to Mr. Fitzgerald’s last comments, I did bring up the environmental report in one of our last meetings. I am just a W-2 employee I can’t afford 500K for an environmental study for the impacts to my property, I’m asking the Zoning Board to do something about. In regards to not hearing anything new, I didn’t hear anything new from the applicant. The Zoning Board unanimously rejected their petition to eliminate the conditions and hopefully the Zoning Board will stick with their position because there hasn’t been anything new presented here. Thank you.

Debra Tall, I did hear something new from Mr. Fitzgerald and that was what I perceive as a threat, a threat to a small town to take this to big stakes legal defense which will be very expensive so to me that is a threat. That was the new information they provided today.

Chair Bernie Volz, there is a cost to the town but it's not astronomical just for the record. There are fairly standard rules on how that proceeds.

Allison Toates, Deb made that comment which I think was on point but at the very beginning at the first meeting the argument was "we are good neighbors" and "Rob Ambrose is a good guy". This is not about whether he's a good guy, this clearly also, not about good neighbors because any business that went before a board that had a unanimous finding that they could not expand, the fact that you are not honoring that from a Board in 2021 reiterating that, is not what I define as a good neighbor.

Chair Bernie Volz, it's their right to appeal the decision and they had certain valid arguments that were procedural issues for the Board to address that is primarily what we are trying to address.

Allison Toates, at the last meeting I zoomed in but the discussion was how could we treat these as discreet items when they are so incredibly interconnected.

Pat Curran, if I could ask the Board to ask Rob or Attorney Fitzgerald if they could provide the dates for item number one when they had to stop operation because they reached the 25 truck limit.

Chair Bernie Volz, have you ever stopped operations?

Rob Ambrose, no I never counted.

Pat Curran, so if we could just stop right there, item number one.

Rob Ambrose, I never needed to count.

Pat Curran, we don't have to go beyond rule number one because they are not even following that.

Rob Ambrose, I'm not saying I am not following it, the town is meant to be the enforcer of that so that was always part of the understanding with the town.

Pat Curran, no the understanding is the owner of the pit would be responsible for adhering to those conditions and counting the trucks per day.

Rob Ambrose, no that was an agreement with Code Enforcement. With the Code Enforcement Officer that is no longer here, it was our understanding that we were not going over.

Chair Bernie Volz, we are not here to deal with enforcement issues.

Gordon Dagnall, so there is no record?

Rob Ambrose, no there was never a record because there never needed to be a record because that was enforced by Mr. Ballance.

Member George Lamprey, and that is part of the set of minutes from the previous hearings that he (Ken Ballance) was monitoring that.

Rob Ambrose, yes that is what we agreed upon with Ken and that is the same agreement Tom had with Ken.

Member George Lamprey, look, there is conflicting interest there are legitimate interests on both sides. We are asked to balance those interests. RSA 155 says the State needs aggregate in essence and you have to allow an opportunity for it. We have a local ordinance that has our requirements and they may not always be on the same page with what the state says is the need for aggregate and our ordinance whereby, special exceptions under 8:1:1:3 is relative to special exceptions. Operations in connection with such use, meaning special exceptions, shall not be more objectionable to nearby properties by reasons of noise, fumes, odor or vibration than would be by any operations of any permitted use in the district which are not subject to special exceptions. We are trying to balance, and that is what they were trying to do that as well in 2002, we will be discussing that in light of conflicting point of view and somebody is not going to like it regardless but we are going to do the best we can to recognize the different interests and striking a balance. I just want to throw that out because it seems like people seem to think it's black and white, it's not black and white. It's two jurisdictions with a couple of different points of view when you're talking RSA 155 and our obligation in following our ordinance. It's the nature of the beast and either side, or the applicant, if he feels that he wants to do due process in a court of law he has absolutely every right to do that and win or lose there. There are **no black hats in here** it's just different interests, legitimate interests. I'll get off my box now.

Rob Ambrose, I completely respect that I completely respect the Board for the tall task they have in front of them on this subject. I respect the people that are in the area and around Center Harbor and in Meredith. I am one of

them, I hear the pit, my kids hear the pit, my neighbors, I live near Gregory. (Referring to Gregory Hime.) I hear the noise traffic on the road, I respect the people that make their living because site and aggregate supply and the work done with aggregate is a major industry for this area. Due to Covid, due to the beautiful nature of this area, it's needed. It's not all going to get supplied from other towns and shouldn't be from other towns. The RSA is there to give Center Harbor the ability to supply economic goods to Center Harbor people. People in the industry and end users. We are part of that, we are not the whole part of it but we are a cog in the wheel and a pretty important part of it. We are not looking to get carte blanche let us do what we want. We understand we are probably, actually; we are one of the only operators of that quarry that can do it economically. Tom couldn't, you might think he could have and you might think he was mom and pop, he wasn't and he couldn't do it. We bought it knowing that there were these restrictions and understanding these restrictions were imposed illegally. Someone else could come in and do it and there were other potential buyers that I'm aware of and know that were going to go to the Board, if they were successful bidders in buying the property, and say you can't run this pit this way and we have a right to reasonably run our business under the RSA. This is just in response of being able to find a fair agreement. We've come to you with what we think is a fair agreement and our point is not to threaten the Town of Center Harbor but we need to negotiate our agreement to run the business more efficiently and environmentally friendly. To move forward, it doesn't make sense to my family, my corporation or the people that I support to not go to Superior Court to remove the restrictions to allow us to operate as a fully permitted business as any other business in town. I need to say this and not letting Attorney Fitzgerald respond to it because I need you to know why I've engaged him, why I want to do this so we can come to that agreement. If we can't, like someone said, we have due process.

Gordan Dagnall, your comments are not really about being a good neighbor, if you don't get it your way let's go to the big court.

Rob Ambrose, you have a lot of anger.

Gordan Dagnall, is there any guarantee that you are not going to sell this quarry.

Chair Bernie Volz, there are no guarantees.

Alliston Toates, that is our concern.

Chair Bernie Volz, yes but as he says anyone can come in and ask for changes and whether we grant them or not they still have an option to take it further.

Someone from the public shouts why did you buy it. Public input was not being addressed through the Chair at some points multiple public members talking over the Chair.

Chair Bernie Volz, these questions are not relevant to this case. The restrictions go with the land and not the property owner.

George Lamprey motions to close the hearing to public input. Seconded by Greg Hime. All in favor. Hearing closed to public input at 8:06 p.m.

Board goes into discussion.

Board Discussion on Condition 1 which is to eliminate Condition #1 of Jan 28, 2002 approval.

Truck limit and lifting that restriction, how that would impact the neighborhood. The applicant is asking to eliminate Condition 1. George Lamprey states that the minutes have reflected an emphasis on truck traffic on route 3 but the truck count is a broader discussion than just the traffic on route 3. Pulling in and out, backing up, braking, slamming of tailgate which is part of noise that we need to look at. Board states there was nothing really new in the letter received by Attorney Fitzgerald pertaining to local trucking vs. trucks coming from further way until a comprehensive route study is done that is an unknown. Increasing the traffic will add to the noise which is against the noise ordinance. With unlimited truck traffic the Board doesn't know the noise impact without a report. George Lamprey wants to reference Section 8:1:1:3 in addition to Section 4:4:1 as he referenced earlier in the hearing, intensity in activity and is it in excessive of what's in Commercial Light Industrial and what's in Agricultural Rural which it's not supposed to exceed. The argument could be made it exceeded under the conditions already but that's the balancing act. Chair provides the Sections being referenced on the monitor for the Board to view. George Lamprey wants to comment that he knows the applicant commented on reasonable

restrictions and George thinks that these restrictions have been in place and over time, given the acquisition he recognized these restrictions were in place and going back to reading my comments in the minutes from the previous hearings, in regards to my question to the applicant about what has changed in the business that brings this up now as opposed to the past, I believe and I don't want to misstate, I think it came down to greater efficiency and I wouldn't argue with that, if there were no restrictions there, an operator could operate with greater efficiency but that's increased activity and I'm not an economist but negative externalities in the operation that, we are balancing with our ordinance so I don't believe the restrictions have proven to be unreasonable. There has not been a lot of griping about the operation because there is a context to it, here are the periods of time that it's operating and that is been exception, I believe, at least largely by the community and that was there trade off. I just wanted to get that umbrella in that I don't believe it's been shown to be unreasonable with these restrictions.

Tim Nefores comments that it sounds as though there was a relationship with the applicant and the town with the operation of the quarry if the operation it to get bigger there are things that should be on the onus of the town to monitor somewhat knowledgeable about quarries. Gregory Hime states Mr. Ambrose stated he had a working relationship with the town that worked that was reasonable and fair under the present existing requirements. Chair adds that the fundamental question is for this particular condition is you are going from 25 truck trips to unlimited, if you were keeping the same business, you may not need more than 25 it's hard to fathom you are not going to increase the level of activity if you're trying to increase the number of truck trips. George Lamprey states the motion can be straight forward but then we should state the reasons as why have decided that. Chair agrees. Board states the ordinances have not changed in this location, but they did add, by Special Exception, to include the operation of a gravel pit in the CI and AR zones. Stephany Marchut Lavallee discusses the term Light Industry, and perhaps that's why these restrictions are on here from when it was originally granted. Quarry does not really fit under the definition of light industry. Chair asks if the zoning has ever changed in this area Board members did not think so. The fact that the quarry is there is a good thing for the town but to increase the operation would be a concern under that definition.

Board places a draft motion on the monitor and has further discussion. Greg Hime states in regard to noise, there functions of the business that exceed the noise level for example gear shifting. There isn't a measurement of noise in those Sections 4:1 xx the word is objectionable. I would eliminate the specifics like gear shifting and just state an excessive level or objectionable level and add as referenced in the specific sections we are looking at. George Lamprey states in Section 8:1:1:3 it states in light of what is allowed in commercial industrial and also agricultural. Chair asks if we want to draw attention to this may also raise the level of activity at the quarry which would create further noise. If you go to "x" trucks a day and go to unlimited the assumption, is you are going to raise the level of activity at the pit by maximizing the activity. George Lamprey states this the dilemma with not addressing all three together and trying to address them individually. In the record we need to have comments like reasonable restrictions and whether or not we think they are unreasonable or reasonable in terms of what it means for the operation. Chair isn't sure they are qualified to make that determination. Tim Nefores states that if this case is to move forward the whole section the Board is reviewing should be referenced in the motion and that all of the discussion documented in the minutes would back that up. George Lamprey states this is why he asked can you have a motion and articulate the reasons separately and my thinking is, you have the core reason in the motion there is no reason, well I don't think we can't, have the record reflect these additional considerations that were part of the reason we voted as we voted. Greg Hime, I agree with George. George Lamprey turns to the Clerk and states I believe it's the full record being looked at. Clerk responds, I would agree the full transcript would be reviewed as part of the record for this decision. George Lamprey and to Karen's point, in addition to the noise there is this reason why I voted and then you have a record of what people on the Board were thinking when they voted the way they did and it's important and we got called on it and rightfully so.

Motion Condition #1

George Lamprey motions on Condition 1 (one), to DENY eliminating condition #1 "a maximum of 25 trucks per day" for reasons that the associated increased truck traffic creates an objectional level of noise, as referenced in Zoning Ordinance sections 8:1:1:3 and 4:4:1.

Seconded by Karen Ponton.

The Board had no further discussion pertaining to the Motion for Condition #1. Chair announces the voting members again as **himself, Karen, Stephany, George and Gregory**. All were in favor of denying the motion for condition #1.

Board Discussion on Condition #3 which is to eliminate (or adjust) the restricted dates of operation of the special conditions of January 28, 2002

Chair states he believes it will create more noise impact over the year potentially and while there may be economic reasons for running the quarry all year round, not all quarries need to operate year-round. They may want to, but they don't necessarily need to. There is more objectionable noise, again it's not the Board's purview so I don't know whether there will be more blasting over the course of the year, again, if the quarry is not in full operation over the year there probably would not be an increase in blasting or noise. Stephany Marchut Lavallee states that in addition to the Town Zoning Ordinance and in reading RSA 155-E:7 it states that it now requires local zoning ordinances must address excavationsand it goes back to Zoning Board's will not create any nuisances of health or safety hazards and I think the nuisance is increased noise, vibrations the blasting the pounding and by the statute we have the right to limit some of that. Stephany states she was a bit concerned by the letter Attorney Fitzgerald submitted and went and reviewed this and so it's not black and white, the Zoning Board's in Towns do have a say on what happens it's not the State has given cart blanche to everything because I was a little bit intimidated when I read his letter. I think we reference RSA 155-E:7 in our motion and in reading through some of their criteria, more truck traffic on rte. 3 and even though this is part of our motion on number 1, they are still all tied together. Greg Hime is concerned with this request as the first request regarding elimination, even though we've discussed it before there hasn't been any offers of something other than complete elimination of this condition. Chair, we always have the option to adjust. Stephany Marchut Lavallee refers to RSA 155-E:8 protection of water resources I know there are wetlands on that property so it allows towns to regulate water sources for example, restricting the depth of an excavation so that it does not disturb a water table. I know that's not part of the application but people have raised that issue and that's something we don't know. Chair, also the Planning Board has some items there they can deal with. Karen Ponton wants to mention, going back to George's comments about the months and going back to our minutes for June 14th (Karen reads from page 4 of June 14, 2021 minutes). Greg Hime adds that was just on the crushing not on the total operations, this condition talks about the operation of the facility year-round. Rob Ambrose, not to interrupt but it's already set that way, there are no restrictions on opening the pit it's just crushing. Chair, no this says "Maximum hours of operation, 7:00 a.m. to 6 p.m. daily, five and a half days a week. The time of operation is March 15 to November 15" so that is any operation. Rob Ambrose responds that's just for crushing. Board states no that is not what this condition refers to. Rob Ambrose, no it's for crushing it's just written wrong on the document you have on display. Condition 4 has to do with crushing not number 3. Rob Ambrose states the March 15 to November is for the crushing. Stephany Marchut Lavallee states the time of operation means you operate between 15 March and 15 November but it's in the document you gave us. Chair these are cut and pasted in this document these are not typed in but for clarification, Chair asks for the Clerk to provide the ZBA approval with the set conditions from January 2002. Members state if that was submitted incorrectly, that is what they are voting on. Clerk provides the approval to the Board and what is being shown on the monitor is in fact the approval granted, condition 3 has to do with the site's operational hours not with the crushing time. The Chair states the crusher is further restricted under number 4 the Board is currently discussion condition 3. George Lamprey mentions from the past hearing the lack of leaves enhances the noise and the sound will travel more without foliage and I believe that is the reason why the current conditions are in place. Members were in agreement. Timothy Nefores adds that any obnoxious use to neighbors is something to think about, if you're operating during that season during those months, you have no foliage and frozen landscapes where noise travels but you also have the hours of operation. At 6 p.m. in the winter it gets dark that doesn't make sense you would have people in a quarry working until that time. Chair states that just says that is all they are allowed it doesn't necessarily mean they are there working. Karen Ponton thinks by taking out the hours of operation and completely eliminating that ultimately alters the character of the neighborhood. Gregory Hime thinks all of these items were heavily debated during their original creation, all with trying to work with the industry in setting some bounds and this is what was dealt at that time and approved. Chair raises by eliminating this it goes to the diminution of property values and the character of

the neighborhood. Board drafts a motion for discussion, changes to the wording by George Lamprey adding "may well" instead of "will" because there is no certainty. Chair adjusts wording based on input from the Board.

Motion Condition #3

Karen Ponton motions on Condition 3 (three), to DENY eliminating from condition #3 "The time of operation is March 15 to November 15" for reasons that extending operations throughout the year may result in:

- **Increasing objectionable noise over a longer period, especially in winter without leaves on trees (Zoning Ordinance sections 8:1:1:3 and 4:4:1)**
- **Negatively impacting the character of the neighborhood**
- **Potentially decreasing property values**

Seconded by Stephany Marchut Lavallee.

The Board had no further discussion pertaining to the Motion for Condition #3. **All were in favor of denying the motion for condition #3.**

Board Discussion on Condition 4 which is to adjust the use of the portable crusher per the Jan 28, 2002 approval.

George Lamprey states the Board spoke earlier that one of the things that has been a balance in the operation relative to the zoning ordinance and these conditions is the frame work of timing of the activity. I don't think that is any more importantly stated than what this condition is for because of the associated blasting, which isn't in our purview, but you just can't separate that fact to provide the material for the crusher. Attorney Fitzgerald may cringe when refer to the blasting but I will, in the minutes, Attorney Fitzgerald did turn to the applicant for clarification and the times of blasting to emphasize the point that it's twice a year. The reason it is twice a year is because of condition number 4, I believe and I think, my layman's look at this. If you eliminate condition number 4, then in all likelihood you have expanded on blasting. I think the crushing time period is critical to the balance with the community and neighborhood and I think it's the most important stated time frame or condition and that's just my perspective. Greg Hime I would like to read relative to what George said, from the May 10th meeting minutes page 2 per Attorney Fitzgerald:

The final condition, Condition 4, is pertaining to the use of the crusher. The goal is not to operate the crusher 52 weeks a year or anywhere near that and this is all detailed in our application. I did note a lot of comments in the letters received mentioned blasting, I suppose I can understand those comments but we have not applied for anything to do with the blasting operations at the pit. We do not anticipate any more activity than what currently occurs and is allowed in our permit.

Chair asks for the last sentence to be read again and then asks if that is in reference to the blasting permit. We don't know what the blasting permit allows or doesn't allow. If it only allows twice that doesn't mean that can't go back and amend that permit. Greg Hime what we are discussing is the crushing. Board agrees. George Lamprey for clarification states his reference was relative to the June 2021 meeting pages 8 and 9. Chair if we take the picture of all three of these there is an attempt to increase the level of activity. Greg Hime and again they are asking that this condition be eliminated completely and there are some weather conditions where they may not be able to crush due to cold weather conditions. Rob Ambrose agrees that yes if the weather is too cold, they don't operate the crusher. Karen Ponton but if crushing was allowed year-round or more than what is currently there, I think that is really an objectionable noise which in my way of hearing is far worse than blasting so to be listening to a crusher going on most of the year is worse. (Multiple members speaking at once inaudible). Tim Nefores states if the weather is bad, they could request from the Selectmen, an adjustment for that. Karen Ponton can we just add the factor of noise and how it significantly impacts the neighborhood.

Motion Condition #4

Karen Ponton motions on Condition 4 (four), to DENY eliminating condition #4 (portable crusher operations) for reasons that extending crusher operations may result in:

- **Increasing periods of noise and vibration from the crusher (Zoning Ordinance sections 8:1:1:3 and 4:4:1)**
- **Negatively impacting the character of the neighborhood**
- **Potentially decreasing property values**

Seconded by Stephany Marchut Lavallee.

The Board had no further discussion pertaining to the Motion for Condition #4. **All were in favor of denying the motion for condition #4.**

Chair states that will conclude the rehearing at 9:13 p.m. Chair states people can stay or leave if they prefer.

III. OTHER:

Selectmen's Admin Robin Woodaman request the Board review their budget for 2022. Clerk states the budget for 2021 was allocated as \$500.00 of which the Board has used \$123.00 leaving \$376.75 for this year. Board decides to keep the budget at \$500.00

Motion: George Lamprey motions to ask for an appropriation of \$500.00 for the ZBA 2022 budget. Gregory Hime seconded the motion. All were in favor.

Clerk states any funds that are left over go back into the General Fund.

Board had no further business to discuss.

IV. ADJOURNMENT:

Chair motioned to adjourn the meeting at 9:26 p.m. Seconded by Karen Ponton. All were in favor of adjourning the meeting.



Center Harbor
NEW HAMPSHIRE

Zoning Board of Adjustment

September 13, 2021

Rev 1

Agenda

I. MINUTES

- Approval of August 9, 2021 Minutes

II. MEETING

- **PUBLIC HEARING - REHEARING – SPECIAL EXCEPTION AMBROSE BROS, INC., Tax Map 220, Lots 24 & 25 and Tax Map 227, Lot 11**

III. OTHER

- New alternate member – Tim Nefores
- Resignation Alternate Member Susan Patz
- Any additional business

IV. IV. ADJOURNMENT

Note that this meeting is being RECORDED!

Introduction

- Call to meeting to order
- ZBA Member introductions
- Determine ZBA voting members: Volz, Lamprey, Ponton, Marchut Lavallee, Hime
- Order:
 - Clerk announces case and reports how notice was given
 - Petitioner(s) present the case
 - Testimony by those in favor
 - Testimony by those opposed
 - Rebuttal by petitioner(s)
 - Rebuttal by opposition
 - Repeat until all issues debated
 - Motion to accept or deny the application
 - Deliberate perhaps with continuation if needed, close hearing, and produce motion
- Anyone speaking is required to first state their name and address and indicate whether a party to the case of an agent or counsel of a party to the case
- Any party that desires to ask a question of another party must do so through the chair

PUBLIC HEARING - REHEARING –
AMEND SPECIAL EXCEPTION
AMBROSE BROS, INC., Tax Map 220,
Lots 24 & 25 and Tax Map 227, Lot
11

Please note that past testimony is part of the record for this hearing and thus any comments should cover new ground and not repeat past testimony already part of the record.

Conditions approved January 28, 2002

Existing Approval:

The Town of Center Harbor Zoning Board of Adjustment on January 28, 2002 granted a special exception to allow the removal of fill, sand, gravel, loam or stone on the subject properties, in accordance with plans and application and testimony presented. The special exception approval was granted to the property owner at that time, Thomas & Penelope Paquette, with 9 conditions as follows:

1. "A maximum of 25 truck trips a day.
2. A minimum buffer zone of 200 feet be kept.
3. Maximum hours of operation, 7:00 AM to 6:00 PM daily, five and a half days a week. The time of operation is March 15 to November 15.
4. A portable crusher may be used for a maximum 3-week period in the spring and fall. The crusher may not be used after May 1 or before October 1. If the weather is bad enough to not be able to work in the spring there should be some flexibility for the Selectmen to extend the crushing period for 2 weeks.
5. The area east of the gully is not subject to future excavation.
6. There shall be a bond for reclamation. The form and amount shall be set by the Planning Board, Selectmen and Town Counsel.
7. Any fill, other than reclamation fill, of this land would require the applicant to return to the ZBA
8. The operation shall be limited to the removal and processing of fill, sand, gravel, loam or stone from this site. No off-site materials shall be brought in. This is not to limit what the Planning Board may allow under RSA 155E for reclamation.
9. This Board defers any further decisions, including those relating to RSA 155E, to the Planning Board."

Request to eliminate #1.

Request to eliminate "The time of operation is March 15 to November 15." from #3.

Request to eliminate #4.

The Role/Responsibility of the Regulator

- Address excavation in the Zoning Ordinance?

When the excavation is not permitted by zoning or other applicable ordinance...excavation shall be deemed to be a use allowed by special exception...in ***any non-residential areas*** of the municipality, and the zoning board of adjustment shall grant such a special exception upon a finding that:

- a. The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood;
- b. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
- c. The excavation will not create any nuisance or create health or safety hazards; and
- d. The excavation complies with such other special exception criteria as may be set out in applicable local ordinances.

- Do you need to address excavation in the Master Plan?
- Conduct an inventory of existing pits
- Conduct site visits
- How to handle compliance issues

4:4 General Regulations

The following provisions shall apply to all districts except where listed.

4:4:1 Obnoxious Use

Any use of property that is extremely objectionable or injurious to the health and welfare of the community is proscribed. This prohibition includes, but is not limited to, the generation of odor, duct, smoke, refuse, fumes, noise, or vibration. The peace, comfort, and safety of the community will receive highest priority in the evaluation of potential property use and in any question of standard, the most stringent of federal, state, and local regulation shall apply.

March 1998

4:4:2 Excavation, Removal, and Filling of Lands

The primary use of land for the excavation, removal, and filling or depositing of any type of earth material, topsoil, gravel, rock may be permitted by exception in certain districts and under the supervision of the Selectmen and after due public hearing on such matters in accordance with a topographic plan submitted by the owner of the property concerned and approval by the Board of Adjustment, subject to RSA 485-A:17 Alteration of Terrain Permits.

March 2013

Eliminate Condition #1 of Jan 28, 2002

1. “A maximum of 25 truck trips a day.”

Amend Condition #3 of Jan 28, 2002

2. Eliminate “The time of operation is March 15 to November 15”
from
“3. Maximum hours of operation, 7:00 AM to 6:00 PM daily, five
and a half days a week. The time of operation is March 15 to
November 15.”

Eliminate Condition #4 of Jan 28, 2002

1. “A portable crusher may be used for a maximum 3-week period in the spring and fall. The crusher may not be used after May 1 or before October 1. If the weather is bad enough to not be able to work in the spring there should be some flexibility for the Selectmen to extend the crushing period for 2 weeks.”

Approve Minutes

- Approval of August 9, 2021 minutes

... and The End

- New Alternate Member Tim Nefores
- Resignation Alternate Member Susan Patz
- Any Other Business
- Adjournment