

Westmoreland Zoning Board of Adjustment
Draft Minutes of Meeting
June 19, 2013

These minutes were approved by the Board on July 24, 2013

Present: Peter Remy, Chairman; Brian Merry, Nancy Ranson, Russ Huntley; Ernie Perham(Alternate)

At 6:30 PM Chairman Remy convened the hearing. The board members reviewed the Minutes from the May 22, 2013 hearing.

Chairman Remy asked for a correction to reflect that it was Attorney Little, and not Chairman Remy who had expressed concerns about documentation which would address the issues of noise and vibrations.

Russ Huntley made a motion to approve the minutes as amended and Nancy Ranson seconded and all members voted in favor.

The Board reviewed the new contact information and made corrections to it.

Chairman Remy welcomed Ernie Perham as a new alternate member of the board. Chairman Remy also said he will call Bill Campbell the other new alternate member.

Larkin Hearing

At 7:00 PM Chairman Remy opened the Larkin Hearing which was noticed as follows:

Notice is hereby given that a hearing will be held at 7:00 PM on Wednesday, June 19, 2013 at the Westmoreland Town Hall concerning a request by James Larkin for an amendment to the Special Exception approved by the Board on June 28, 2012. The applicant is asking for an extension of the agreed upon date of June 20, 2013 for completion of the first phase of the reconstruction and landscaping of his property located at 852 Rte 12, Westmoreland; Map R14 Lot 34 in the Commercial/ Industrial district.

The clerk read the application which was received on June 1st, 2013 and listed the abutters who are; Barry Shonbeck, Ryan Royce, Akbar Ashoury, EMH Ventures, and One Hundred Eleven. All notices were accepted and the receipts were returned.

Chairman Remy invited Mr. Larkin to speak to his application. Mr. Larkin said that he had been unable to do the work on his property that he had planned to do by June 20, 2013 because he had suffered some health issues since the end of 2012. But he had the new septic system installed and the front porch was almost complete.

Mr. Merry asked how much still had to be done. Mr. Larkin said that he needed to finish the porch, put on the second story and finish the front landscaping. He felt that he could finish all this within a year.

Nancy Ranson asked how his driveway had held up with all the rain. Mr. Larkin said it had held up well.

Mr. Remy asked if there were abutters present who would like to speak. No one did but Mr. Remy urged Mr. Larkin to clean the outside up a bit, not as a ZBA requirement but do what he could. Mr. Shonbeck asked that he mow the grass.

Russ made a motion to grant the amendment and Brian seconded. All voted in favor. Barry Shonbeck, an abutter to the property, did not participate in the discussion or the voting.

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Kyle Keith Hearing

Mr. Remy called the next hearing on the following application which was noticed as follows:

The Westmoreland Zoning Board will hold a hearing at 7:00 pm on Wednesday, June 19, 2013 at the Westmoreland Town Hall concerning a request by Kyle Keith for a Special Exception required by the Westmoreland Ordinances Section 206 dealing with Non-Conforming Uses. The applicant proposes to remove an attached structure at his property located at 770 South Village Road (Map U2, Lot 30) and add a 30 foot by 25 foot attached structure.

Chairman Remy invited Mr. Keith to explain his proposal. Mr. Keith showed some pictures to the Board of what the attached structure was like when he bought it. He then showed a diagram of his property and the proposed new structure with the dimensions and the distances to the property line marked. This is a non-conforming property as the setbacks on two sides do not meet the 50 foot requirements. In addition, as the board examined the dimensions of the proposed structure, it appeared that it would be more than a 20% expansion and would require a Variance and a second Variance because it would intrude into the setbacks even more than the current structure.

Chairman Remy asked the Board to examine the wording of Section 206.1. It could be interpreted in two ways. In regard to the expansion of not more than 20% the Ordinance says, "shall not increase the non-conforming use or size of the structure by more than 20% from the original building(s) foundation..." Did the ordinance mean the total square footage of all the buildings on the property or only the building which was being expanded. If the former, Mr. Keith would not need a Variance for the size of the expansion.

Mr. Remy asked each Board member to weigh in on how the ordinance should be interpreted. Mr. Shonbeck suggested that the parenthesis which would pluralize the word building into 'buildings' should really be an apostrophe and should read the building's foundation. It was pointed out that foundation is singular and not plural. Mr. Remy polled the Board and the majority felt that the Ordinance referred only to the building which was being enlarged.

Mr. Remy explained to Mr. Keith that if wanted to decrease the size and footprint of the addition he would not require the Variances and the Board could go ahead with his application for a Special Exception. Otherwise he would need to submit a new application through the Zoning Administrator, David Wirth. The applicant's son, Chris Keith, said that Mr. Wirth had told them at the time of applying that they would need a Variance for more than 20%.

Mr. Remy asked if there were any abutters present who would like to speak.

Carla Dennie came forward representing Hans Dennie who was unable to attend. She said that Mr. Dennie was not in favor of any more development and she was not sure what the proposal entailed. Mr. Remy invited her up to examine the map Mr. Keith had drawn.

Mr. Keith said he was interested in buying land from Mr. Dennie but it required a complete survey and he has not yet made inquiries into that.

Mr. Remy told Mr. Keith that the Special Exception application could be continued until the next meeting or whenever Mr. Keith submits the new application. Mr. Keith formally asked for a continuance of the hearing on his Special Exception.

Nancy Ranson made a motion to continue the hearing until July 17, 2013 at 7:30 PM. Russ Huntley seconded and all voted in favor.

Graves Trucking Hearing June 19, 2013

This hearing was continued twice; the first hearing on April 17, 2013 was continued at the request of the applicant because there were fewer than five voting Board members present; and the second on May 22, 2013 was continued at the request of the Board which asked the applicant for more documentation on concerns raised by the town attorney.

Chairman Remy opened the hearing shortly after 7:30PM. The clerk read the original application which was noticed as follows:

A hearing will be held at 7:30 on Wednesday, April 17, 2013 at the Westmoreland Town Hall concerning a request by Graves Trucking, Inc. for a Special Exception concerning Article III, Section 305.1 and Article V, Sections 501.A and 501.D and Tables 502 and 505; and Variances concerning Article IV, Sections 402, 414, and 445 and Article V, Tables 502 and 505 of the Westmoreland Zoning Ordinances. The applicant proposes to establish and operate a quarry to excavate bedrock at the property located off Old Route 12 North, Map 17 Lots 28/29 in the Commercial/Industrial and Rural Residential zones.

The following abutters were notified by certified mail:

Wesley Staples

George Graves

State of New Hampshire(railroad land)

Town of Walpole (for regional impact obligations)

Lois Nimke (near neighbor separated by railroad land)

Patricia Rodrigues and John Corduff(near neighbor separated by railroad land)

Chairman Remy began by telling the Board that Attorney Tom Brittain and the Westmoreland Town Attorney, Silas Little, had talked about the issue of the duration of the railroad crossing permits but Attorney Little still had some concerns about the facilities at the site. He advised, however, that the hearing be opened and conditions could be established that might resolve his concerns.

Mr. Remy asked Dick Fraser of One Source Permitting and Properties, Inc. to begin his presentation on behalf of Tim Graves, the applicant.

Mr. Fraser asked the Board to go through the booklet he had prepared showing all the relevant information about the proposed project.

He pointed out the Alteration of Terrain permit (page 8 of booklet) issued by the NH Dept of Environmental Services and called attention to the fact that the applicant must submit a written update and revised plan every five years, giving some oversight.

Mr. Shonbeck asked if the reclamation plans are for an extended time or only for five years. Mr. Fraser said that they don't expect the plans to change substantially over a long time and if a new plan is considered they would come back to the Board for a permit.

Mr. Fraser read from page 10 and 11 of his booklet about the scope of this project.

He also went over the five criteria for a special exception and ways that this proposal would satisfy those criteria.

Pages 10-15 of Material Prepared for Graves Trucking Application

Introduction

Project Description & Existing Site Conditions

PROJECT DESCRIPTION

The owner of Graves Trucking, Inc., Timothy Graves, has been involved in the excavation, processing, and trucking of sand and gravel materials for many years relative to his father's property which is contiguous to the subject property. Mr. George Graves first established the excavation site in 1989. That site has provided a living for the family and several employees (and their families) while manufacturing/processing aggregate materials to the greater Westmoreland area. As with any nonrenewable resource, the amount of remaining saleable aggregate on his property has dwindled during the recent years.

Graves Trucking, Inc. purchased the subject property in 2007 from Donald Blanchflower. The 31.2± acre parcel is located off Old Route 12 North and is adjacent to the former Boston & Maine Railroad right-of-way now owned by the State of New Hampshire. Although the property does not have frontage on a public road, it does have legal access to Old Route 12 North, in part a Class V highway, via an easement created at the time the property was established in 1944, together with a license issued by the State of New Hampshire to cross the former railroad right-of-way. The crossing agreement provides legal access to Old Route 12 North. The lateral limits of the State ROW are illustrated on a survey plan developed by DiBernardo Associates, LLC, dated January 9, 2013. The survey is part of the application's plan set. Please note an existing driveway entrance to the subject property is established along the ROW.

As one might suspect, the shallowness of the topsoil above bedrock and slope of the land does not lend itself easily to most types of development, but is ideally suited for the development of a quarry site (please see test pit logs included elsewhere in the application materials). Of the total acreage, approximately 17.8± acres will be dedicated to excavation activity.

The quarry operation will be quite small in scale compared to others operated in the greater region. In fact, the proposed operation is actually small in scale to other related commercial sand and gravel operations. Annual production is estimated to be roughly 25,000-30,000 cubic yards. Once the quarry is developed, the number of shots per years will likely be in the 2 to 3 range. Activities associated with aggregate processing, trucking, etc. will essentially remain as they have for the past 24 years. Haul trucks moving material from one property to the other will not impact town roads or nearby properties. Truck routes leaving the site will not change. As with all business models. Graves Trucking is hoping production will increase as a result of local natural aggregates (sand & gravel) being further depleted and regional demand for its products rise.

The current Graves operation employs roughly \$500,000-\$600,000 worth of equipment to operate. Most, if not all will be used in connection with the operation of the proposed site. The primary and secondary crushing equipment, screens, and conveyors will remain where they are located presently. The applicant is anticipating to truck all shot rock from the Project Area to the existing crusher/screening operation located on the George Graves property via an existing private road. The proposed quarry will fit hand in glove with the present operation.

On March 15, 2012, Jonathan Sisson (Certified Wetland Scientist and Certified Soil Scientist) filed a report relative to the wetland study/delineation conducted on the property on December 22, 2011. The report is included in the application booklet and the location of wetlands is presented on the plan sheets. The applicant has elected to preserve and protect those water resources and therefore the proposed quarry site is sited in a manner that provides no impact.

The extraction of ledge will be conducted in a responsible manner with an emphasis being placed on preventing storm water and erosion & sediment transportation issues. Unstabilized areas will be evaluated on a regular basis with associated structural and nonstructural measures will be employed as necessary to protect water quality. The devices will be periodically checked, maintained, or replaced as needed.

Each development phase will be conducted in such a manner as to retain all runoff within the illustrated project area. Grading of the developing quarry floor will be sloped so that runoff is contained within the quarry. This will provide for storm water storage and infiltration within the subdrilled blasted surface. An

auxiliary sedimentation basin has been incorporated into the plan to provide another layer of control /during the development stage of the quarry. It is located on the adjacent property which is incidentally owned by Mr. Graves' father. Once the grade of the floor within the quarry is established, the auxiliary sedimentation basin's benefit will diminish. Diversion of runoff away from the project area (relative to peripheral areas), silt fence and/or hay bales, berms, and/or other Best Management Practices will be utilized within and/or adjacent to the project area as needed. See Plan Sheets for specific details.

A bar gate will be constructed at the entrance to discourage unauthorized entry onto the property.

Test pits performed by One Source Properties & Permitting on December 22, 2011 indicate bedrock is located between 1.5'± to 10.0'± below the surface. The test pit logs are included in the application materials.

According to the USDA Web Soil Survey and the USDA, Soil Survey of Cheshire County (1989), the proposed quarry site is underlain primarily by Dutchess silt loam (367D) and Cardigan-Kearsarge complex (360C/D). These soil types are categorized in Hydrologic Soil Group B. The area located at the base of the project area is underlain by Hoosic gravelly fine sandy loam (510B/E) and is categorized in Hydrologic Soil Group A. The nature of the development plan (internally drained) will provide the means for the natural treatment of all runoff. The NRCS soil type boundaries are delineated on the Plan Sheets.

Special Exceptions

A Special Exception is requested pursuant to the terms of Article III, Section 305.1, Article V, Section 501 (A) and (D), and Tables 502 and 505 of the town's ordinance.

The project before the board is in harmony with the general purpose and intent of the ordinance.

1. The specific site is an appropriate location for such a use.

Although the subject site is bisected by the Commercial/Industrial and Rural Residential zoning districts, the proposed development of the property as a quarry is a use permitted by the town's zoning ordinance pending the issuance of a Special Exception. As described in the Project Description, the subject property is located adjacent to an existing excavation site and aggregate processing facility. The property, owned by George Graves, began excavation activities in 1989 and has utilized Old Route 12 North as its point of ingress and egress for haul trucks and the like to service the greater Westmoreland market area.

The proposed project will seamlessly dovetail and ultimately replace the existing George Graves operation (for reasons articulated in the Project Description). In fact, the subject project will utilize the same earth moving equipment, haul trucks, aggregate processing equipment, and transportation routes currently used at the existing site. Material excavated from the project area will be transported to the existing processing facility via a private road, not impacting public roads or any dwellings proximate to the property. It is reasonable to conclude the project area is uniquely located for such use, for the activities described above have been a part of the greater locality for nearly a quarter century.

The attributes and geology of the land formation comprising the Graves Trucking property uniquely fit into those which are integral to a quarry site. The shallowness of topsoil to bedrock (see test pit data which is

part of this booklet) and sloping topography make it ideal for such use. It should be noted the primary slope faces north, away from any dwellings in the general area. It is from this point the quarry will be established.

As an aside, and acknowledging the Hodgkins & Sons Inc. excavation site is located within the town of Walpole, it's simply another example of a closely related use located within several hundred feet of the Westmoreland town line.

Simply stated, the act of excavating construction aggregate would not alter the essential character of the locality since the exposure to the use has been evident for decades. In summary, the proposed activity is appropriately sited and such use is expressly articulated as a permitted use by Special Exception in both zoning districts.

2. Such approval would not reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood.

The results of approving the special exception for the proposed excavation site will not reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood. Integral to the design of the excavation plan, and with utmost consideration are measures to eliminate or severely mitigate potential impacts to neighbors and the community.

As stated previously, excavation and associated activities have been in existence in the surrounding area for decades. As a result, property owners along Old Route 12 North have coexisted with haul truck traffic for many years. According to Mr. Graves, the operation of aggregate processing equipment and equipment required to excavate and move the product have not been an issue for the greater neighborhood. The proposed project will be very similar to what the neighborhood has experienced/presently experiences. The only additional factor being introduced is the process of mining the bedrock. It is very important for the board to realize that activity will occur on a very limited basis. Once the quarry site has been opened, blasting is expected to be limited to 2-3 shots per year. The event (blasting), in realistic terms, has a life measured in seconds. The process of drilling of holes to prepare for each shot will occur over a period of 2-3 days. The noise emanating from the drilling equipment will be non-intrusive based in part on the mature vegetative buffer that exists along the property boundary. Please note the equipment is also equipped with a dust collector which will effectively address the associated potential issue of fugitive dust.

The project area is designed so that excavation will take place in a "bowl". This provides a means by which storm water runoff is contained on site and allowed to infiltrate within the sub-drilled floor of the excavation. The floor of the quarry will be sloped slightly toward the working face thus "training" the water to remain within the project area. A sediment/infiltration basin is designed north of the project area and will serve to capture storm water from the haul road and quarry during the initial development stage. The project area will be screened from all Westmoreland developed properties proximate to its location. The mature forested buffer and slopes adjacent to the site will serve to "hide" the site from neighboring properties and folks travelling along Route 12 and Old Route 12 North.

Impacts from vibration, unsanitary conditions (no buildings or associated refuse issues are planned during the life of this project), and the like, will not result from the proposed project. According to Mr. Thomas Key (Key Drilling & Blasting Services, Inc.), three or four seismographs at different locations will be used to monitor all blasting activity. It is important to note, the shots will be small (approximately 5,000-10,000 cu yds) and infrequent. Once the shot rock is dropped, the process of excavating and loading the material is straightforward. Crushing aggregate on site is not envisioned for this project.

The proposed activity will be seasonal, typically from May through November. Once established, the operation will utilize an excavator. Trucks entering the site will utilize a circular traffic pattern in the excavation site (whenever possible) to eliminate noise emanating from the backup alarm. No tailgate "slamming" will occur, for ledge stone will be loaded, not delivered on site.

Unlike years ago, fugitive dust within excavation sites is now regulated by the New Hampshire Department of Environmental Services (see Chapter Env-A 1002). Dust will be effectively mitigated by using water or calcium chloride upon the entrance way and within the floor of the site, as needed. Calcium chloride has been proven to be very effective and is used by many towns to control dust along their gravel roads. All loaded material transportation vehicle drivers will insure loads are covered prior to leaving the site. This serves to contain dust and prevent spillage during the transportation of sand and gravel.

The proposed use has been carefully sited and sized, and designed to protect nearby natural areas. It should be noted the New Hampshire Department of Environmental Services conducted a comprehensive, technical review of the proposed project. The review was conducted by the Bureau's supervisor, Ridge Mauck PE. Subsequently, on March 26, 2012, Graves Trucking, Inc. was issued a NHDES Alteration of Terrain Permit (pursuant to RSA 485-A: 17) relative to the proposed activity (copy attached).

Structural and nonstructural measures (Best Management Practices) will be employed, as necessary, to protect water quality. They will be periodically checked, maintained, or replaced as needed. Each development phase will be conducted in such a manner as to retain runoff within the project area. All potential impacts to wetlands will be avoided. Silt fence and/or hay bales, berms, and/or other Best Management Practices will be utilized within and/or adjacent to the project areas as needed (see Plan Sheet 3 of 3 for specific details). The project will employ the Best Management Practices, indicative of a commitment to responsible land stewardship as it relates to the environment and community.

A gated entrance will be erected to discourage unauthorized entry. Signage will be posted and berms constructed along the perimeter of the quarry to indicate the activity occurring on the property. "

When the project is complete, the land will more easily accommodate the future use of the property for business or commercial development. The Charlestown Economic Development Association's quarry site off Flint Road in Charlestown can be a model for such vision.

3. There will be no nuisance or hazards to vehicles or pedestrians.

The point of ingress and egress is located along the State of New Hampshire land (ROW) at a point where Old Route 12 terminates. Visibility approaching and departing this point is excellent. There is nothing in the proposal that would suggest there be a nuisance or serious hazard to vehicles or pedestrians.

Thoughtful considerations to speed, noise, and courteous truck operations will be instilled in drivers operating to and from the excavation site. The frequency of truck traffic from the site will likely remain at levels previously experienced from the George Graves operation (roughly 12-15 truck trips per day during the construction season). For the period from December 1 thru April 1, the amount of truck traffic is negligible. As in any business model, the hope is to increase sales and perhaps there may be a modest increase in truck traffic in the future.

A stabilized construction entrance will be built at the driveway entrance to the site. Please see the plan sheets for details on location and construction detail. This device is designed to insure that fines and small

aggregate are "cleaned" from tires prior to the transportation vehicle entering other roadways. The device will be routinely maintained to insure it operates as intended. As stated previously, all loaded material transportation vehicle drivers will insure loads are covered prior to leaving the site. This serves to contain dust and prevent spillage during the transportation of material.

4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

As one might appreciate, this type of operation does not lend itself to being reliant on facilities that might be appropriate for other types of development. The use of heavy equipment will facilitate construction of staging areas used for establishing the site, constructing work areas for the excavator and haul vehicles, the creation of topsoil and stump storage areas, and the like.

Most of the aggregate materials which will be used to construct/expand the existing haul road network will come from the project area. The scope of the project suggests the Town of Westmoreland will not be asked to provide any town services, or be required to expend any funds relative to the intended use.

Mr. Fraser answered the following questions from Board members as he read from the project proposal:

Barry Shonbeck asked if the quarry site would be idle during the times between the shots. Mr. Fraser said that it would. All of the blasted material will be trucked over to the sand and gravel property to be processed.

Mr. Shonbeck inquired if it is likely that the quarry will fill with water eventually.

Mr. Fraser said that aside from some puddling the quarry will not fill with water. It is designed so that water will either be infiltrated or go into the storm runoff system.

He made the point that sand and gravel operations have to operate where the sand and gravel is, whether it is in a residential or rural district.

Mr. Fraser called attention to the Alteration of Terrain permit issued by the NH Department of Environmental Services on page 6. The conditions for the permit include no violations of the surface water quality standards; obtaining a Wetlands Permit, if applicable, and a written update every five years.

There is also a report on plant and animal species impact by the New Hampshire Natural Heritage Bureau. A site visit from them concluded that there were no rare plant or animal species on the property.

Mr. Fraser moved on to photographs of the site showing the entrance to the site and a clear cut area which is the area of the project. Mr. Merry asked the size of the clear cut. Mr. Fraser said the present clear cut is about six and one half acres and will be enough for several years.

Mr. Fraser continued discussing the other sections of the booklet including a lengthy section on Best Management Practices such as stump and brush management, fuel storage, fuel spills, fuel delivery and training of employees.

There are also several depth logs indicating how far below the surface the bedrock will be found, ranging from 1.5 feet to 10 feet.

Mr. Fraser delineated several of the best management practices that the quarry would use for erosion control, production sequence and reclamation, structured berms.

Mr. Shonbeck asked whether there were any historical features on the land such as old roads or cellar holes. Mr. Fraser did not know of any.

Brian Merry asked about 'opening' the quarry. Thomas Key of Key Drilling and Blasting said that there will be several small 'shots' to open up the face and determine the grade. After opening the quarry there will be two to three shots per year. The plan is to have a 5,000 to 10,000 cubic yard blast at the beginning. As the face gets larger more material will be produced per shot.

Mr. Merry commented that a blast that produced 10,000 cubic yards must be a pretty sizeable blast. Mr. Key said that he didn't expect 10,000 cubic yards right away. The face would have to be bigger. Mr. Merry inquired about winter operations. The quarry will be closed for the winter beginning sometime in November.

Mr. Remy asked about the noise and vibration issues that were of concern at the previous hearing.

Mr. Fraser submitted a statement from Mr. Peter Hicks, Operations manager and owner of Seismic Solutions, Inc., Lancaster, MA, stating his confidence that the blasting vibrations would not be greater than the acceptable amount (0.002 inch) according to the Westmoreland Zoning Ordinances. The remainder of his statement gave his qualifications as an expert.

Mr. Remy asked who would monitor the blasts. Mr. Key said that the monitor would be Mr. Hicks, that they work together all the time. Mr. Hicks sets up monitoring stations 200 feet away and the equipment records all the information about the size of the blast and the effects of the blast. That record is kept. Mr. Remy inquired why this was done. Was it for insurance purposes? Mr. Key said that the State of NH requires monitoring within 200 feet in case there might be a cracked foundation or some other damage. That's why the inside and outside of the house is camcordered before the blast. It's normal practice.

Mr. Remy asked about meeting the Noise Ordinance levels. Mr. Fraser submitted a report of a noise sampling he conducted at the site of Mr. George Graves. Mr. Remy asked him to read his report which is as follows:

***June 17, 2013
Mr. Peter Remy, Chairman
Westmoreland Zoning Board of Adjustment
Westmoreland, New Hampshire
Re: Graves Trucking, Inc.
Noise Sampling***

***Dear Mr. Remy:
On June 13, 2013 at approximately 8:00 AM, noise sampling was conducted at the George Graves excavation site. The effort was undertaken by me to quantify noise levels from the equipment and***

associated activity which would be part of the Graves Trucking, Inc. operation which is being planned for the adjacent property (in part within the Commercial/Industrial zoning district). A Komatsu PC400LC excavator and a Volvo A35 rock truck were used during the sampling effort. Readings were conducted exclusively when the excavator was loading and dumping ledge materials into the body of the haul unit. In addition, the effort was staged in a wide open area, void of any mitigating manmade structures, land formations, and vegetation (shrubs, trees, grasses, etc.) which are integral and essential to any noise management plan.

A handheld sound level meter, set on a tripod, was used to record noise readings. The unit utilizes an electret condenser microphone. The accuracy rate of the meter is reported to be ± 2 dB at 114 dB. It should be noted that all sampling was conducted utilizing the units integrated average measurement capability (A-weighting scale). The results of the sampling are reported as the average sound level based on readings continuously collected for a period of 199 seconds. The time period proved to be adequate to load material from a stockpile and nearly full-load the rock truck.

As mentioned above, tree belts, shrub plantings, berms, land formations, etc. have a significant impact on reducing noise levels. According to the Aggregate Handbook (pages attached), tree belts reduce noise levels by 5 to 10 decibels. More importantly, and that which is germane to the noise sampling conducted on June 13, is that "Reductions of 8 to 12 decibels are common when areas of tree, shrub, and grass combinations are compared to unplanted hard surfaces, like a pavement or bare ground." Please keep in mind the latter condition existed during the sampling.

Berms, according to the Aggregate Handbook, offer reductions in noise levels. Reductions of 10 to 15 decibels can be experienced with a 12 foot high berm combined with a tree belt. As the Board is aware, an integral part of the quarry plan is the construction of a berm along the perimeter of the site utilizing overburden obtained from stripping the project area. According to a noise expert from Epsilon Associates, there is typically a 10 dB reduction in noise as a result of having a berm which is 5' higher than the machinery causing the noise.

In addition, the Aggregate Handbook states that noise levels normally decrease by 6 decibels with every doubling of distance from the noise source. Also, pit walls (in this case, quarry walls) serve as barriers in the direct line path between these operations and the neighboring properties.

The Graves Trucking quarry operation will be a limited, seasonal activity which operates only during daylight hours. As suggested in the application materials, it is likely there be only 2 or 3 small shots per year. The resulting shot rock from each shot will be trucked by a haul truck to the existing processing plant located on the George Graves property. According to Graves Trucking, the activity of loading and transporting the material from the quarry site will take place over a period of roughly 4-5 days. There will not be crushers, vibratory screens, conveyor belts, or any other process equipment operated within the quarry site.

As the quarry is being developed, one excavator will be utilized to load one haul truck. This is the framework under which the readings were taken. During the site prep process, where the topsoil is stripped from the ledge, berms constructed, etc., perhaps other pieces of equipment will be involved. Since this activity represents a short amount of time, the impacts will be short lived and therefore associated noise readings are not accounted.

Applicant's excavation activity will very likely meet the town's noise standard at the property lines with the appropriate mitigating measures in place.

100' 74-75 dB 5± dB 10± dB Appreciable

200' 60 dB 5± dB 10± dB Appreciable

*****Decibel reduction based on the minimum published amount or from input from a noise expert***

******Represents either an increased distance from the noise source or location of excavation activity on the floor of the quarry having near vertical walls.***

I offer this document not as a noise expert, but as one that has worked in the industry or worked as a consultant to the industry for a period of over twenty years. My experience includes working closely with a noise specialist who have been exposed to and intimately involved with quantifying noise levels relative to similar excavation projects. Also, I've had over the years, spent time reading and researching the subject topic. It is from this perspective that I offer this document.

Respectfully submitted, Richard A. Fraser

Mr. Fraser added that they will maintain the buffer zone and construct 12 foot high berms and the quarry walls will all act to mitigate any noises and will reduce the noise to below the levels of the ordinance.

Mr. Remy asked what about the noise of the blasts even though this will occur only two or three times a year.

Mr. Fraser referred to the Zoning Ordinance and Mr. Key said he relies on Mr. Hicks to determine the noise level.

Mr. Remy said he understands that the noise of the warning horn would be louder than 70 decibels which is for safety's sake.

Mr. Huntley asked if there were crushers already on the George Graves property. Or would this it be an additional source of noise?

Mr. Fraser said that the crusher unit is already working on site and has been there for years.

Barry Shonbeck inquired about the calibration of the sound meter. Was it calibrated to a national standard? Were the microphones appropriately directional?

Mr. Fraser said he has worked with a noise engineer for many years and he feels comfortable that the procedures were correct and the measurements accurate. The instrument was pre-calibrated by the manufacturer.

Mr. Merry asked about the hours of operation. Mr. Tim Graves said the hours would be 7am to 5pm, unless in exceptional circumstances there might be an occasional Saturday or an early start at 6am. Mr. Merry also inquired about storage of any materials that could contaminate the ground and groundwater. Mr. Graves said that no materials like that would be stored on that property.

Mr. Merry asked Mr. Key if he ever experienced a blast which altered a well. Mr. Key said he never had a problem with a damaged well. If the situation was delicate they would test the well before the blast.

Mr. Remy asked about an easement or water rights to Eleanor Paine to a well or a spring. Mr. Graves directed the question to Mr. Fraser as he had no knowledge of it himself. He knew that there was

mention of it on the deed but he did not know Eleanor Paine or where the water was located. Mr. Fraser said it was a spring. Mr. Remy asked if she was an abutter and Mr. Graves did not think so.

Mr. Shonbeck asked about safety concerns created by the steep vertical cliff created by the quarrying which Mr. Fraser had shown on a large drawing
Mr. Fraser said there would be twelve foot high berms preventing anyone from falling over the cliff.

Mr. Remy asked who would monitor all the Best Management Practices.
Mr. Fraser said that the Alteration of Terrain Department of the NHDES would handle that. At present they are short staffed due to budget issues but in the past the Department has always been pro-active. And the AOT permit requires a written update every five years.

Mr. Remy mentioned that Graves Trucking is producing 15-20, 000 cubic yards of sand and gravel per year.

Mr. Shonbeck inquired how the neighbors will be notified about upcoming blasting. Mr. Key said that neighbors are spoken to in person 3-4 days before the blast. He asks if they want their house camcorderd. If someone does, Mr. Key calls Peter Hicks who comes and camcords the inside and outside of the house. The neighbor is given a copy of the recording and Graves Trucking gets a copy. If he is blasting for a highway he has to put a notice in the paper in addition to notifying each neighbor. Two days in advance of the blast and then an hour or two before the actual blast he notifies them again.

Mr. Remy inquired about stump removal disposal. Mr. Fraser said that will not be an issue for several years because of the present clear cut and those stumps have already been removed. Some use the stumps as fill. Some people stock pile the stumps and put a silt fence around it until they decay.

Mr. Remy asked about soil erosion on the clear cut six acres. Mr. Fraser said silt fences are up and the edges have been seeded. It's hard to control torrential downpours on top of exposed ledge.

Mr. Remy asked about the classification of the road used from the Walpole side to enter the site. Mr. Graves said he considers it a class 6 road ending at the pavement. Years ago Route 12 went off to the left and the road Graves use now was a private drive. The Westmoreland Road Agent, Gary Hudson, said he believes Old Route 12 North is a class v road maintained by the town. Mr. Graves said that they plan to use Old Route Twelve and not the 'old' Old Route Twelve. Mr. Graves said he believes that the Town of Westmoreland owns that piece of road they drive over and Wesley Staples, a former Road Agent said he believes that the town discontinued the road subject to gates and bars. But if it is gates and bars it is a class 6 road. Mr. Remy asked if Graves Tucking has ever contacted the town to see if they can maintain it as town roads aren't maintained by individual property owners.

Mr. Remy asked if any abutters would like to speak.

Patricia Rodrigues gave a letter to the board, signed by herself and her husband, John Corduff, of 52 Old Route 12 North, and several neighbors.

Mr. Corduff asked to speak and he said that contrary to what he had been told at the last hearing the town attorney had told him that they were abutters and should have been notified as such.

Mr. Remy said that Attorney Little had asked the Board to notify Ms. Rodrigues and Mr. Corduff because of the easement across their property that Graves Trucking uses to get to their work site, not because they fit the town's definition of abutters.

The letter addressed the criteria for granting Special Exceptions and Variances and the signatories' reasons for objecting to the application.

Ms. Rodrigues said that the elder Mr. Graves, bought the property which became a sand and gravel operation and cut through the railroad embankment and ignored the legal cut which was a cattle crossing. The recent crossing permit issued by the state should not be legal because the cut there was made and used without permission for many years.

Ms. Rodrigues said she is worried about damage to her well, the noise, and leaking water.

Mr. Fraser responded that the NHDES issued the Alteration of Terrain permit which indicates they were clearly satisfied with the provisions for the project and they would not have been if it seemed to be a danger to the wells of the surrounding properties.

Mr. Key said that he would be happy to check her well and walk her property to alleviate her concerns.

Mr. Corduff said that many neighbors have complained about dust and noise.

Ms. Rodrigues said the neighborhood had been putting up with two gravel pits across the line in Walpole for all these years.

Mr. Remy responded that it would be different if the gravel pit did not already exist. He asked Ms. Rodrigues to read the first section of her letter which included the following points:

- Four residences are ready for all of the activities to cease, never mind adding a new one.
- They have complained for a long time about truck noise, road deterioration, dust, etc.
- Blasting makes them all concerned about their wells.
- All of these factors reduce their property values.

The entire letter is as follows:

June 18, 2013

To: Westmoreland Zoning Board of Adjustment, Westmoreland, NH

This is a letter being presented previous to and for consideration at the Zoning Board meeting scheduled for June 19, 2013 by the majority of landowners/ residents of Old Route 12 North with serious concerns about the proposed Graves Excavation Site of Map 17 Lots 28/29.

in response to the specific reasoning for the Special Exceptions asked for In the Project booklet, we contest that- Article III, Section 305.1B.

- 1. The specific site is an appropriate location for such use. –***

As there are 4 residences immediately down slope from the project in question which have already put up with the activities of the 2 pits just across the town line in Walpole for many years, we residents are more than ready for the activities to cease and certainly do not wish to endure a continuance of such activities in our own town/neighborhood and in even closer proximity for decades to come. The gaping and unattractive holes in the ground we see now when we take a walk down the road are not what we want more of.

B. 2. Such approval would not reduce the value of any property within the district, or otherwise be injurious, obnoxious, or offensive to the neighborhood. –

To have the family owner of the existing and proposed pits simply state that the operation of the existing pit hasn't been an issue to the neighborhood is simply absurd.

We all complained initially of the relentless dust, braking and rattling truck noises, fast trucks, before 6am truck noise, and broken up road pavement, but after an initial short appeasement of our complaints, the problems would begin again. We all got tired of complaining and just put up with it, knowing some day the pit would be gone and all the things we disliked would end. For just two of us to hear of this project "as a courtesy" by our own town, and not at all by our "neighbors", the Graves, is at a minimum, a slap in the face, and, more importantly, not in alignment with the state definition of "abutter", which includes "...any person who is able to demonstrate that his land will be directly affected by the proposal under consideration", e.g. "any person whose property is located in New Hampshire and adjoins or is directly across the street or stream (or, in this case, abandoned railway) from the land under consideration by the local land use board." Of course the inclusion of blasting is potentially even more injurious in that we all are concerned about our wells, and the alteration/concentration of surface and sub-surface water run-off down slope from the property in question, which is already considerable, is another matter not adequately addressed. The "seasonality" of the project is just when we all like to be outdoors and have our windows open and not deal with the effects of an operating pit in close proximity. We have also found that the very few times that the Graves' actually responded to our complaints of dust with spraying water were minimally effective and never lasted and were not repeated without repeated complaints which we all grew tired of making, and they certainly never treated the dusty road conditions of their own accord. To say that all these effects would not diminish our property values should we be honest with potential buyers is totally unrealistic.

B. 3. There will be no nuisance or hazards to vehicles or pedestrians.

Dust has been a continual nuisance, settling on resident cars and any other items outdoors; resident children, adults, and recreational users of the roadway have been bothered by the speeds of the trucks at times, and, for the project operators to state that "Thoughtful consideration to speed, noise, and courteous truck operations will be instilled in drivers operating to and from the excavation site" is again, unrealistic. How could they possibly "instill" anything in the numerous and ever-changing drivers who are not their own employees and are essentially the public at large? In fact, now that the road has been repaved, the trucks can go faster....

B. 4. Adequate and appropriate facilities will t>e provided for the proper operation of the proposed use.

It is inaccurate to say that "...the Town of Westmoreland will not be asked to provide any town services, or be required to expend any funds relative to the intended use." The town, and all the tax-

paying residents of this town, have been paying for Old Route 12 North to be both initially paved, and periodically repaved with considerable periods of disrepair allowed to exist in between), when there was no need for paving prior to the existing Graves' pit truck use/abuse of the road.

- Article V, Section 501.A Commercial/Industrial District

We assert that only a small fraction of the lot in question is actually zoned C/l, that it does not have any road frontage as required, that it does have access via a ROW "across property of an abutter" (yes, even the applicant's own report says "abutter", at least twice) which allowed for occasional log trucks to enter the lot, as was properly utilized by the former landowner, and that the driveway now in use was built without prior permission over the railway bed and into the lot in question; proper permits were only obtained within the last several months when the driveway has indeed existed for several years. Furthermore, as to the formal agreement with the NHDOT to cross the state ROW via a private road already in existence, the private road in question to George Graves' pit was also created without permission when George Graves knocked down the railway bed of his own accord when he "started" his excavations in 1989. On page 10 in the Project Description where it states that the property "... does have legal access to Old Route 12 North... via an easement created at the time the property was established in 1944, together with a license issued by the State of New Hampshire to cross the former railroad right-of way", the easement referred to is contained in the deed of June 7, 1944 Arthur Christian to Arthur and Alfred Chickering Volume 510/p86, which goes back even further to the deed of Alfred Chickering to Arthur Christian Vol 471/pl88 which is the common link between the property in question and the property now of Patricia Rodrigues and John Corduff, whose deed also stipulates "... a right of way along the northeast corner as now being used" and is the easement referred to in the second paragraph of the boxed statement on p. 16 of the Project Description/ Application Materials. The easement in question, however, is supposed to be at the "Farm Crossing" indicated on both map Exhibits A and B contained in the TUA/license with the State of NH and is not located where George Graves knocked down the railway bed and currently has his road to his gravel pit. The supposedly "Former Farm crossing at grade, cattle pass removed" which is the supposed "Crossing Location" on Exhibit B is still in existence with the cattle pass intact just slightly south of the portion of the railway bed George Graves knocked down for his road.

There are several people willing to attest to the fact that the railway bed was intact before 1989 and that it was not intact after George Graves started his pit, even though permissions have never been received from the state to knock down the railway bed. The expanded view of Exhibit B also shows the Walpole-Westmoreland town line to be north of where Aldrich Brook goes under the railway bed through a large stone arch culvert whereas more recent maps show the town line to be considerably south of the brook and culvert - when and where is the documentation showing this change? The state and appropriate legal officials are being notified of these discrepancies so they can be rectified, so now the current TUA must not be allowed with errors in its Exhibit maps.

Incidentally, the land has been used for public recreational use, e.g. snowmobiling and hiking, which is in keeping with the state's adjacent "Rails to Trails" program and is an allowed use for town C/l property.

- Article V, Section 501.D

Rural/Residential District - Although Special Exceptions are allowed for this district, the "area is limited to secondary agricultural, forestry, and certain other non-intensive (underline added) land uses." Furthermore, "The purpose of this district is... to prevent development where it would be a burden on the community." Our neighborhood/community feels that a quarry in such close proximity would be both invasive and a burden. The former landowner's use of the lot for periodically harvesting timber was reasonably suited, appropriate and even desirable to the community/neighborhood, and since Mr. Graves purchased it with that knowledge of its appropriate use, he should accept that use and not claim "hardship" because we do not want to allow him to exploit the land as we have seen occur across the town line.

As for being in the public interest, or for doing substantial justice, we do not agree that the town needs another source of gravel/quarry products as there are already several other quarries in the town, so dire need is not an issue, especially since it is admitted in the booklet that it is a relatively smaller project.

We feel it would be a substantial injustice to the rest of the neighborhood to allow the Special Exception of a quarry, diminishing our property values and thus the town's tax base, and, at least as importantly, our quality of life.

As for the Variances -

Article IV, Sections 402 - Required Frontage on Public Roads –

You do not have any road frontage, whether it be 200 ft or 500 ft., as required in Tables 502 and 505.

414 - Location of Driveways - Regardless of the variance(s) asked for, the driveway and access to it over the state ROW was put in years ago without the guidance or prior permission of the state as written as a requirement in the Temporary Use Agreement dated 3/29/13 and 4/22/13. and without the proper easement in place as contained in the Easement Deed with George Graves dated 3/27/13, and which his right to have even created the ROW over/through the state railway bed is in question, as stated previously.

445 - Grading - No grading, cut or fill shall be carried out in any district, which leaves the slope of the finished grade in excess of one to two. - You plan to leave near vertical ledges of twelve to one and not have a reclamation plan, which sounds like an unaesthetic and even dangerous environment similar to what has been going on in Walpole all these years which our community/neighborhood does not want. I believe Chairman Remy stated in the May 22, 2013 meeting that "...in light of the ordinances, they (quarry and sand and gravel pit) fall into the same category and are subject to the same rules and regulations." Seeing as the Reclamation Plan for George Graves' pit which is supposed to be of public record has not been "locatable" by Walpole officials, our faith in the Graves' ability in general to follow through with requirements and to operate a pit in a manner our community/neighborhood can live with is seriously in question and outright doubtful. It even appears on various aerial maps that Lot 29 has already been excavated without prior town approval or taxation as seems to be a recurring tactic with this family company. As stated before with the property, right-of-way and town lines on various maps presented not being consistent it is difficult to follow what is really going on.

We are a residential neighborhood, which is allowed in our C/l zone, and we plan on keeping our quality of life as intact as possible, seeing as the other two pits allowed in Walpole have already

diminished that. Removing embankments down to the level of Aldrich Brook has increased noise and disturbed plant and wildlife (where have the ruffed grouse gone?), and allowed runoff into the brook.... We need to preserve what we have on our side of the town line and we will fight to do so.

Sincerely,

A majority of the landowners/residents of Old Route 12 North, Westmoreland, NH:

Patricia Rodrigues and John Corduff, 52 Old Route 12 North, Westmoreland, NH

Mrs. Lois Nimke, 36 Old Route 12 North, Westmoreland, NH

Mr. and Mrs. Gary McRae, 39 Old Route 12 North, Westmoreland, NH

Mr. and Mrs. Scott Giza, 37 Old Route 12 North, Westmoreland, NH

Mr. Jeffrey Scott, owner R-17, Lot 17C

Addendum: the town of Walpole has since informed us that George Graves' pit is "grandfathered in" meaning he does not have a Reclamation plan or bond and, presumably, he can leave the pit in whatever state he sees fit, which is not reassuring to our neighborhood at all.

Attorney Brittain said that Graves Trucking has the right to cross the railroad where they have been given the permit to use.

Mr. Huntley asked if both parties could be right, that the Graves have a right to pass where they are passing and there is a historic passing place that Graves Trucking does not use.

Mr. Merry tried to clarify that the Graves have the right to get to the railroad tracks and the state has given them a permit to cross where they are crossing.

Ms. Rodrigues asked why is it okay to do what you want and then get a permit later? Mr. Remy said that the State could have said 'no' but they didn't.

Ms. Rodrigues said that the land that will be the new quarry site is the sound buffer that will disappear as the quarry is developed.

Ms. Rodrigues is very concerned about maintaining the integrity of her well.

Mr. Fraser said that the DES would not have issued the Alteration of Terrain Permit if more measures were needed than the project has planned.

The map was examined to get a sense of the distance between the Rodrigues/Corduff house and the George Graves property. Mr. Fraser said there should be even less noise for the Rodrigues/Corduff property because of the vertical wall of the quarry and also the berm.

Mr. Fraser said that the issues raised by Ms. Rodrigues will be carefully considered by the Zoning Board and the Planning Board to require that approval of this application rests on satisfying the concerns of the abutters.

Another abutter, Wes Staples, told the board that he has no problem with the proposed project. He added that the trucks were going on that road before the houses were there. He sees no reason to deny approval.

Ken Wright said he had known Tim Graves for 25 years and he is as good as his word. If he says he will do something he will.

Ernie Vose of Walpole also spoke approvingly of Mr. Graves and supports the proposed project.

Bill Patnode said that he buys gravel from Tim Graves all the time and works with Tom Key, of Key Blasting building expensive homes on Spofford Lake. Mr. Key is able to blast within feet of these homes and there has never been a problem. Mr. Patnode also supports approval of the application.

There were no other comments from the public.

Mr. Shonbeck asked when the berms would be developed. Mr. Fraser said the berms are established as the pit is formed and they will follow the expanding edge of the pit but they are always there.

Mr. Merry asked Chairman Remy if a site visit would be appropriate. There was discussion from Board members about whether that would be helpful and Chairman Remy decided that although it is unusual it would be helpful to visit the site. The site visit was set for Wednesday, June 26, 2013 at 6:30 pm at the Graves property on Old Route Twelve North. At that time the board would set the date for the next continuance.

Brian Merry moved to continue the hearing until June 26, 2013 at 6:30 pm at the Graves property. Nancy Ranson seconded the motion and all voted in favor.

At approximately 10:45 pm Nancy Ranson moved to adjourn the meeting and Brian Merry seconded and all voted in favor.