

STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE SUPREME COURT

Juliana Lonergan, et al

v.

Town of Sanbornton

Docket No. 2022-0142

PLAINTIFFS' MEMORANDUM OF LAW

This case was submitted to this honorable Court as an appeal of a decision by the Belknap County Superior Court affirming the Town of Sanbornton (“Town”) Zoning Board of Adjustment’s (“ZBA”) approval of a special exception for R. D. Edmunds Land Holdings, LLC (“Respondent”) to operate a gravel pit in the General Agriculture zoning district on Tax Map 15, Lot 58 (“Respondent’s Property”) directly abutting the homestead of Juliana and David Lonergan (“Plaintiff”). On February 1, 2023, immediately prior to oral argument, Counsel for the Town contacted Plaintiffs’ counsel to advise he would be asking this Court whether it had subject matter jurisdiction over this matter because he believed the Plaintiffs’ motion for rehearing was untimely, as described in RSA 155-E:9 due to the decision made in K & B Rock Crushing v. Town of Auburn, 153 N.H. 566 (2006).

Question Present

Does the Court's holding in K& B Rock Crushing v. Town of Auburn, 153 N.H. 566 (2006) control the disposition of this case?

BRIEF ANSWER

While it is undisputed the N.H. Supreme Court retains subject matter jurisdiction over all matters coming before the court, whether K & B Rock Crushing controls the disposition of this case depends upon: (a) whether the legislative body in the Town of Sanbornton approved the authority granted to the Town of Sanbornton Planning Board by RSA 155-E:1, III(a) being transferred to the ZBA; and (b) whether the ZBA's written notice to the public and abutters pursuant to RSA 676:7 sufficiently notified them it would be considering the Respondent's special exception application pursuant to Article 18(B)(3) of the Ordinance ("Ordinance") and if approved, it would include the excavation permit required by RSA 155-E:3 to operate its excavation. The Plaintiffs' represent the answer is "no" on both questions.

FACTS

On July 21, 2020, the Respondent submitted a form entitled "Application for Appeal" as its "Application for Special Exception" referring to "Article 18, Section B.3" of the Ordinance with a narrative stating:

"The proposed gravel pit excavation as designed will not impair the health or property of others, create hazard to life or property. The property will be graded such that all runoff from the excavation will drain inwardly. No runoff from the excavation area will enter streams or other surface waters. Property slope benching and erosion and sediment controls will be implemented consistently with NHDES BMP's. Upon completion, excavations will be reclaimed per NH RSA

155-5. Additionally, an AOT permit, (NH RSA 485-A:17) has been approved.”

Apx. at 4-5.

The “Notice of Public Hearing” sent by the ZBA to the abutters described its purpose as to review a Special Exception Application pursuant to Article 18, Section B.3 of the Ordinance and described the Respondent’s use as proposing “earth excavation and gravel pit operation”. Exhibit B. The ZBA’s August 25, 2022 minutes describe the Application as a Special Exception without any mention of an excavation permit pursuant to RSA 155-E:3 issuing or being awarded if the Respondent’s application was granted. Apx. at 46. As its deliberations closed on February 23, 2021, ZBA Member Bormes made a motion to grant the special exception which was followed by a second, and the ZBA Members voted 4-1 to approve the application. Apx. at 126. The Plaintiffs filed a motion for rehearing with the ZBA on March 24, 2021, and after it was denied on April 20, 2021, submitted an appeal pursuant to RSA 677:4 to the Belknap Superior Court. Apx. at 141-142.

ZBA AUTHORITY AS “REGULATOR”

The legislative history of the Ordinance is described on its final pages and is hereby supplemented by the attached Exhibits relevant to Article 18, Section 3(B) only. Apx. at 240-245. The Town of Sanbornton adopted zoning on March 13, 1956. Apx. at 240. During its March 14, 1978 Town meeting, the legislative body approved Ordinance Amendment No. 4 to the Ordinance authorizing the Selectmen to inspect reclaimed excavation sites. Exhibit A(14); but see, Exhibit C (34). During the 1978 Town meeting,

the voters also approved Ordinance Amendment No. 5 to adopt the Aquifer Conservation District. Exhibit A(14). Other department reports appearing in the 1978 Annual Report confirm the ZBA had been approving special exceptions for gravel pits under the Ordinance during that year and during 1980. Exhibit A(16-17). On August 24, 1979, the N.H. legislature adopted RSA Chapter 155-E, preempting local excavation regulations conflicting with its requirements. Exhibit A(18).

The Town's 1983 Annual Report included a report by the Sanbornton Planning Board stating it had been with the ZBA to bring its "*sand and gravel provisions in line with State law*". Exhibit A(19). During the March 14, 1984 Town meeting, Ordinance Amendment No. 5 was approved to add subparagraph (e) to Article XII, Section B, to alert applicants for gravel pits they must comply with State and Town requirements. Exhibit A(21). In 1986, Ordinance Amendment No. 6, described on the list of amendments in the Ordinance as "Defining enforcement powers of ZBA and BOS" despite the language of the warrant article limiting the removal of sand and gravel to land located in the General Agricultural¹ or Forest Conservation District and to allow the Town to draw upon those sources as permitted by RSA 155-E was proposed². Exhibit A(24 & 25); Apx. at 243. Although Ordinance Article #6 was initially defeated, it passed by one vote after a recount. Exhibit A(26).

¹ Amendment #6 was added to the General Provisions of the Ordinance listing restrictions applied throughout Sanbornton. Notable is that the permitted uses listed in the General Agricultural District do not list a gravel pit as a use permitted by special exception. Apx. at 155.

² It is also noteworthy that despite the Ordinance being a permissive ordinance, there is nothing within the section detailing the permitted uses in the General Agricultural District stating a gravel permit is permitted there with a special exception.

In 1994, Ordinance Amendment #1 was presented and read as follows:

“Amend Article XII- B-4 to define the separate enforcement powers of the selectmen and the ZBA (Zoning Board of Adjustment) and preserving the applicants right of appeal in the regulation of land use for excavation or removal of earth materials, such as gravel pits.”

Exhibit A(27)

The minutes of the March 9, 1994 Town meeting simply state: “Article 1 was accepted as read” Exhibit A(28) but Article 18 (B)(3)(f) was amended in the Ordinance as follows:

“The selectman or their appointed agents shall be responsible for the enforcement of the conditions of any special exception and shall have all the enforcement powers described in RSA 676:15, and RSA 676: 17-a, in addition any exception shall be subject to the fines and penalties set forth in RSA 676: 17.

In instances where RSA 155-E: 10 requires the regulator to enforce the terms of RSA 155 E the zoning board of adjustment as regulators shall be responsible for any enforcement action for violations of RSA 155 E bracket March 1994.”

Apx. at 231.

JURISDICTION

Subject matter jurisdiction is a court’s legal authority over persons and things allowing it to review and decide the outcome of the case. New Hampshire Alpha of SAE Tr. v. Town of Hanover, 174 N.H. 269, 274 (2021). Any party may challenge subject matter jurisdiction at any time during a proceeding, including on appeal. Id. The Town did not raise the issue of the Plaintiffs’ motion for rehearing to the ZBA as being untimely until February 1, 2023 and there was no discussion of RSA 155-E by the trial court transcript. The Court in its Order mentions RSA 155-E as described in the Ordinance.

I. RSA 155-E:9 Does Not Apply Because the Legislative Body Did Not Vote to Appoint the “Regulator”.

As explained in K & B, RSA 155-E:9 requires an aggrieved party to file a motion for rehearing within the “regulator” within 10 days of any decision regarding any decision relating to an excavation permit before appealing a decision with the superior court. K & B Rock Crushing at 568. K & B had submitted a permit application to excavate and crush rock on a 5.5 acre tract to the Town of Auburn Planning Board representing Phase I would include approximately 1.6 acres. K & B Rock Crushing at 567. The Planning Board limited its approval to Phase I and K & B appealed its decision to the superior court pursuant to RSA 677:15, without filing the required motion for rehearing within 10 days. Id.

After the Town filed its motion to dismiss alleging the court lacked jurisdiction, the court denied the motion and approved K & B’s permit to excavate the full 5.5 acres, causing the Town to appeal. Id. After explaining why RSA 155-E:9 was a specific legislative grant to municipalities under its general police powers, separate from its power to zone, the N.H. Supreme Court reversed the trial court decision and held K & B should have filed a motion for rehearing. Id. at 567; See also, Town of Goffstown v. Thibeault, 129 N.H. 454, 4558-59 (1987).

Unlike K & B where the planning board had been statutorily appointed the Town’s “regulator” pursuant to RSA 155-E:1, III(a), the Town did not “duly warn” the voters it was choosing to appoint the ZBA its “regulator” as opposed to the planning board. Exhibit A. Therefore, the ZBA had no authority to approve an excavation permit being issued to the Respondent under RSA 155-E:3, to preclude RSA 155-E:9 from applying.

A zoning board has only the powers expressly conferred upon it by statute or those necessarily implied by those statutes. New Hampshire Alpha of SAE Tr. at 278. Zoning boards are authorized to: (a) hear and decide appeals regarding alleged errors in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance in accordance under RSA 676:5; (b) grant variances in accordance with RSA 674:33(I)(a)(2); (c) to grant special exceptions to the terms of the ordinance; and (d) approving equitable waivers under RSA 674:33-a. As to special exceptions, the ZBA's authority is further limited by the requirement that the proposed use be in harmony with the general purpose and intent of the zoning ordinance and sufficient evidence being submitted by the applicant to satisfy all criteria in the ordinance. RSA 674:33(IV)(a).

RSA 155-E:1, III defines the "regulator" as: the planning board of the city or town³, or if a town at any annual or special meeting duly warned for the purpose so provides, the selectman of the town or the board of adjustments; or be if there is no planning for the selectman of the town of the legislative body of the city; or (c) the county commissioners, if the land area is in an unincorporated place. (emphasis supplied). In addition to approving new excavation permits under RSA 155-E:3, the "regulator" is charged under RSA 155-E with determining whether an existing excavation is exempt from the permitting requirements of 155-E:2; if an existing excavation is subject to the reclamation requirements of RSA 155-E:5; whether a government performing highway excavation is

³ RSA 155-E:3 also requires an application for an excavation permit be sent to the conservation commission which did not happen here.

exempt from permitting under RSA 155-E:2((V)); considering renewal permits; tracking reclamation efforts of current gravel pits; and adopting local regulations under RSA 155-E:11, should they be desired. Town of Carroll v. Rines, 164 N.H. 523, 528 (2013). As the Ordinance currently reads, it remains unclear who takes care of these other tasks in Sanbornton.

Warrant articles must describe the subject matter to be acted upon at Town meeting in order to provide sufficient notice to voters of matters to be acted upon at Town meeting. McKinney v. Riley, 105 N.H. 249, 252 (1964); Dow v. Town of Effingham, 148 N.H. 121, 129 (2002). This is especially important when a Town chooses to alter the statutory delegation of authority like that found in RSA 155-E:1, III(a). Anderson v. Motorsports Holdings, LLC, 155 N.H. 491, 498 (2007). The numerous irregularities associated with these warrant articles deprived the Town's voters of proper notice and the opportunity for public debate required by the statute because fair notice is necessary for a valid referendum. Barcomb v. Herman, 116 N.H. 318, 320 (1976).

The distinctions between a zoning board approval of a special exception and a Town's authority to approve an excavation permit has long since been recognized by the courts as the matters to be reviewed are different. NBAC Corp. v. Town of Weare, 147 N.H. 328, 329 (2001). While the ZBA had the required authority to grant the Respondent's special exception request, it did not have authority to act as the Town's "regulator" to approve its excavation permit.

While the Town may suggest the Town's past practice imposed an administrative gloss on the grant of excavation permits, this is not enough to redirect authority expressly

granted by the N.H. legislature to local planning boards to the ZBA. An administrative gloss is sometimes imposed on an ambiguous clause found in local regulations by those responsible for its implementation and interpretation when it has been applied to similarly situated applicants over a period of years without legislative interference. Town of Carroll v. Rines, 164 N.H. 523, 527, (2013). The plain language of Article 18(B)(3) states the ZBA may grant “special exceptions” and does not refer to “excavation permits” and RSA 155-E:1, III(a) makes it clear a legislative body vote is required to delegate the regulator authority elsewhere. This leaves the ZBA without express authority under RSA 155-E:1, III(a) and without authorization to issue a decision as the regulator, its decisions are not subject to RSA 155-E:9.

II. The ZBA Notice Only Addressed a Special Exception.

RSA 676:7, II requires public notice of zoning board hearings be posted in the newspaper at least 5 days before the hearing date and be sent to abutters by verified mail as defined in RSA 21:53. Proper notice is a prerequisite to establishing the board’s jurisdiction. Hussey v. Town of Barrington, 135 N.H. 227, 231 (1992). In addition, notice must be reasonably calculated to apprise the public and the abutters of the matter before the board, to afford them an opportunity to present evidence or object. In re Kilton, 156 N.H. 632, 638 (2007).

The notice of public hearing sent to the Plaintiffs was silent as to an RSA 155-E:3 excavation permit being issued to the Respondent. Exhibit B. In the alternative, the ZBA’s notice of public hearing specifically described an Application For Special Exception (ZBA 2020-4) under “Sanbornton Zoning Ordinance Article 18 Section B.3”. Exhibit B. The

Respondent's application was also entitled: "Application for Appeal" and requested a "Special Exception from Article 18 Section B.3" as was stated on its Attachment. Apx. 4-5 (emphasis supplied). Although they may not expand its authority, Article 6 of the ZBA's Rules of Procedure limit its authority to matters expressly described by RSA 674:33, with the exception of equitable waivers. Exhibit C(32-33) Article 10.1 describes the ZBA's obligation to make bi-annual inspection of existing gravel pits but does not mention the term "regulator" or otherwise refer to its approval of excavation permits. Exhibit C. The ZBA's authority is limited to that granted by the legislature and it does not include excavation permits.

CONCLUSION

The Plaintiffs acknowledge the N.H. Supreme Court retains ongoing subject matter jurisdiction over all matters before a New Hampshire court and this question can be raised at any time. However, in light of the legislative history of the Town's Ordinance attached as Exhibit A and the Town's failure to honor the statutory prerequisites to appoint the ZBA as its "regulator", it would be wholly unjust to allow the ZBA's approval of the Respondent's special exception to also act as an excavation permit without further review by the Planning Board, who remains the "regulator" in the Town of Sanbornton. The Respondent should also not be allowed to avoid appearing before the Planning Board a second time,⁴ which alone is suspect.

⁴ The first time, the ZBA refused to allow the Planning Board an opportunity to determine whether the Respondent's Property was located in the Aquifer Conservation District, over which it has exclusive jurisdiction, regardless of its determination.

Respectfully submitted,
Juliana & David Lonergan

By their attorneys
Panciocco Law, LLC

February 14, 2023

/s/ Patricia M. Panciocco

Patricia M. Panciocco (Bar #15872)

One Club Acre Lane

Bedford, NH 03110

Phone: (603) 518-5370

E-mail: Pat@panciocolaw.com

CERTIFICATE OF SERVICE

I certify that on February 14, 2023, a copy of the foregoing pleading is being or has been served on all parties or counsel of record in accordance with the rules of the Supreme Court, as follows: I am serving registered e-filers through the court's electronic filing system; I am serving or have served all other parties by mailing or hand-delivering a copy to them.

Dated: February 14, 2023

/s/ Patricia M. Panciocco

Patricia M. Panciocco

PLAINTIFFS' EXHIBITS TABLE OF CONTENTS

Exhibit A – Ordinance Legislative History Article I & 18 13

Exhibit B – Notice of Public Hearing Respondent’s Application⁵ 29

Exhibit C – Town of Sanbornton Planning Board Rules of Procedure30

⁵ Not included in Certified Record

TOWN WARRANT—1978

The State of New Hampshire

The polls will be open from 10:00 A.M. until 6:30 P.M.

To the Inhabitants of the Town of Sanbornton in the County of Belknap in said State, qualified to vote in Town Affairs:

You are hereby notified to meet in the Town Hall in said Sanbornton on Tuesday, the fourteenth day of March, next at ten of the clock in the forenoon, to act upon the following subjects:

1. To choose all necessary Town Officers for the Year ensuing.

2. To choose all necessary district officers for the Winnisquam Regional School District.

3. To vote on the following proposition submitted by petition in accordance with statutory authority (RSA 39:2-a): To change the date of Town Meetings, other than the part of the Meeting at which Town Officers are chosen for the year ensuing, to the Saturday in March immediately following that part, at nine of the clock in the forenoon, and to take effect beginning in March 1979.

4. To vote on the following proposed amendments to the Zoning Ordinances as recommended by the Planning Board:

AMENDMENT NO. 1. To remove a conflicting provision (Article XVIII, Paragraph A-3) to as to require approval by the Board of Adjustment for professional offices, home occupations, and home industries in the Forest Conservation District so that the procedure will be the same as now in the General Residence, General Agricultural, and Historical Preservation Districts. YES.

AMENDMENT NO. 2 To provide for a minimum lot frontage of 175 feet in the Highway Commercial District. (There is no minimum frontage requirement now.) YES

AMENDMENT NO. 3 To increase the front set back for buildings in the General Agricultural, Commercial, Recreation, General Residence, and Forest Conservation District;

To decrease the front set back for buildings in the Highway Commercial District;

To increase the rear and side set backs for buildings in all districts (except Historic Preservation District), and

To permit a building no more than 30' high at the highest point relative to the surrounding terrain (instead of the adjacent road) in the Commercial District.

To make the above set backs applicable to home industries, home occupations, and motels. NO

AMENDMENT NO. 4 To specify that the Selectmen be responsible for an on site inspection of reclaimed land previously approved for excavation, earth removal, deposition of garbage, waste material or by products, to insure that the reclamation is according to plan, prior to release of owner/operator performance bond. YES.

AMENDMENT NO. 5. To establish an Aquifer Conservation District to preserve the quality of underground water by placing certain restrictions on uses and developments on land therein. YES.

AMENDMENT NO. 6. To redefine the term "dwelling". YES.

AMENDMENT NO. 7. To define the term "lot," which is not presently defined. YES.

* * *

You are hereby notified to meet at the Town Hall in said Sanbornton on Wednesday, the fifteenth day of March next at seven-thirty of the clock in the evening, to act upon the following subjects:

1. To raise such sums of money as may be necessary to defray Town Charges for the ensuing year and make appropriations of the same. YES.

2. To see what action the Town will take on the Budget as recommended by the Budget Committee.

Moved, seconded & voted to postpone until after Art. 38. Motion to accept seconded. Motion to amend to read: Town Poor \$3,000.00. Motion to accept Budget as amended by this meeting seconded. Accepted as amended.

3. To see if the Town will vote to authorize the Selectmen to hire such sums of money as may be necessary to defray Town Charges in anticipation of taxes; to administer or dispose of any real estate, at public auction, acquired through Tax Collector's deeds; and to apply for and accept mental agencies. YES.

4. To see if the Town will vote to raise and appropriate the sum of \$92,542.00 for maintenance of highways and bridges, this sum to include \$16,843.31 of State Highway Subsidy Funds. YES.

5. To see if the Town will vote to raise and appropriate the sum of \$1,281.01 for Town Road Aid (TRA), the State's share \$8,540.07. YES.

6. To see if the Town will vote to raise and appropriate the sum of \$2,856.33 for Class V Roads (Duncan Fund). YES.

7. To see if the Town will vote to raise and appropriate the sum of \$9,649.73 in Additional Highway Subsidy Funds in accordance with the provisions of RSA 241:15 for Class IV and V Roads. YES.

8. To see if the Town will vote to maintain the other half of the Range Road known as the Leavitt Road from the crest of the hill, where maintenance presently stops, to its junction with Lower Bay Road, a distance of approximately one third ($\frac{1}{3}$) of a mile. By Petition.

Moved to dismiss and seconded. Honored petition to vote by secret ballot previously mentioned. Results of vote—YES 150 NO. 33.

9. To see if the Town will vote to maintain Calef Hill Road from its junction with Pound Road to the Laughy residence, a distance of approximately one quarter ($\frac{1}{4}$) of a mile. By Petition. NO.

10 To see whether the Town will vote to elect the members of the Planning Board, pursuant to RSA 36:4, II-b, instead of having the members appointed. By Petition.

Motion to dismiss & seconded. Petition to vote by secret ballot was invalidated due to withdrawal of signature by Pauline Sullivan (Petitioner) and oral vote was taken. Dismissed.

11. To see if the Town will vote to designate Brook Road from

BOARD OF ADJUSTMENT

The following chart summarizes the activities of the Board of Adjustment during 1978.

Appellant	Action Sought	Disposition
Richard P. Davis	Variance to convert barn to apartment building, residential zone	Denied
Leo & Florence Drouin	Variance to subdivide lot, recreational zone	Denied
William Zaccardo	Special exception to operate machine shop as home industry, in recreational zone	Denied
Sant Bani Ashram	Special exception to construct pond in wetlands area	Granted
Lois Bingham	Variance to convert shed to apartment in historic preservation zone	Denied
Richard Persons . Milo Pike	Special exception to remove gravel agricultural zone	Granted
James Auger	Special exception to remove gravel Residential Zone	Granted
Leslie Robinson	Variance to allow substandard lot agricultural Zone	Granted

ZONING BOARD OF ADJUSTMENT

During 1980, the Zoning Board of Adjustment held seven hearings to consider appeals for variances or special exceptions. The chart below indicates the nature of each appeal, and the Board's decision.

Appellant	Request	Decision
George Phillips	Variance for 2 lot subdivision, slightly under required size. Hermit Lake Road, Recreation Dist.	Granted
Maurice Hueber	Variance for building lot without road frontage. Hermit Lake, Island, Recreation Dist.	Granted
Jean Auger	Special exception for gravel pit, Route 3B, Agricultural Dist.	Granted
Willard & Alice Hoffmire	Special exception for bakery. Prescott Road, Residential Dist.	Granted
David Welch	Special exception for gravel pit. March Road, Agricultural Dist.	Granted
John & Ethel Mullen	Variance for mobile home. Birch Drive, Recreation Dist.	Denied
Pike Industries	Special exception for gravel pit. Pound Rd., Agr. & Res. Dist.	(Application withdrawn)

Respectfully submitted,
Jean Surowiec, Chm.
Zoning Board of Adjustment

LAKES REGION PLANNING COMMISSION

The Lakes Region Planning Commission has been active in several areas of interest to Sanbornton. The Commission is beginning a bikeway project to work with all towns, from Meredith to Franklin, toward implementing a regional bikeway system by using the sewer line right of way.

While Sanbornton has a good sanitary landfill facility, the Commission has organized thirteen neighboring towns, from Gilford to Danbury, toward finding an areawide solid waste solution, one in which the waste materials can be recycled or used for productive energy.

LRPC is in the process of evaluating groundwater resources (quantity and quality) in the Lakes Region. The Commission has worked with six communities toward implementing a shared town manager program.

LRPC developed model Earth Excavation Regulations, based on Chapter 155-E. In February, it hosted a workshop for surveyors and developers toward identifying common mistakes made on subdivision proposals and working for prevention of such mistakes. This workshop was based on an analysis of information gathered through LRPC's National Science Foundation grant, where 13 developments were scrutinized in 1980.

The planner assigned to Sanbornton is Roger Akeley. He and his predecessor, John Dickey, assisted the town in the following ways:

- Conducted a detailed environmental assessment of a proposal to lease the town development rights on private property.
- Prepared an environmental statement for an EIS to meet grant requirements for the HRCS.
- Provided an interpretation on the town's requirements for provision of information prior to beginning the 90-day review process.
- Consulted with the Sounding Board Chairman on community survey analysis and sent him an example of other analyses.

SANBORNTON PLANNING BOARD ANNUAL REPORT

The major focus of Planning Board activities during the year continued to be work on the Town's new Master Plan. Informational meetings were held with members of the School Board and the Superintendent of Schools, the Fire Chief, the Police Chief, the Road Agent, the Conservations Commission, and the Chairman of the Solid Waste Committee. As a result of these discussions, preliminary policy statements have been developed on the following town services: education, police, roads, fire protection, conservation, and the solid waste disposal. These policy statements will continue to be reviewed and revised by the Board and will serve as the basis of the Community Services component of the Master Plan. Once complete, they will be presented at public hearing for comment.

On January 6, 1984 the Planning Board held a public hearing on the Introduction, Demography, and Land Use chapters of the proposed Plan. After comments were noted and amendments made, the Board voted to adopt these sections. This action means that a current, community-based and -written Master Plan now has been officially adopted by the Town. Zoning amendments as may be necessary to implement the Plan will be developed and submitted to the Town for vote. Additional sections of the Plan will be adopted as they are completed. It is the intent of the Board to establish a schedule for the periodic review of the Plan in order that the document might be kept current and in line with the philosophy and needs of the Town.

Subdivision activity in Town continued to follow the pattern of previous years with most new lots being created to accommodate families wishing to give a lot to their child or break off a single lot for sale. Eleven new lots were created, one boundry line adjustment made, and one annexation handled. Two subdivision applications were denied.

Toward the end of the year the Board turned its attention to a review of the Town's Zoning ordinance in order that any needed zoning amendments might be brought to vote at the Town Meeting. The Board worked with the ZBA in preparation of an amendment to correct a typographical error that occurred when the ordinance was typed sometime prior to 1977, and to bring our sand and gravel provisions in line with State law. Additionally the Board has been involved in developing a definition of Light Manufacturing and Light Manufacturing Company to supplement a zoning petition that has been received to rezone a portion of the Commercial zone to permit "light manufacturing companies" in addition to commercial activities. Public hearings have been held on these matters. These questions will be finalized and prepared for submission to the voters at Town Meeting.

As a result of legislative action during the 1983 session of the General Court, the state's Planning and Zoning laws have been recodified (i.e., reorganized and renumbered) into a new Title and new chapters for the Revised Statutes

chising authority for the franchising and regulation of Cable Television Systems pursuant to R.S.A. Chapter 53-C

Discussion of this article brought out the fact that "Cable Television Systems" as used in the writing of this article makes no reference to a particular company.

Accepted as read

Article #1 was removed from the table.

The budget was amended at this time by an increase in the liability insurance fee of \$350.00.

This \$350.00 increase was accepted.

Therefore, the total budget figure as presented by the Budget Committee, in the amount of \$545,612.40, is adjusted by the above amendments as follows:

\$545,612.40	Budget figure before amendments
+ 20,000.00	Article #15
- 3,500.00	Article #19
+ 353.00	Insurance fee increase

\$562,465.40 Final budget figure as amended by vote of the Town.

The budget was accepted as amended

As a final item of discussion for this night's meeting, it was suggested that an effort be made to distribute the Town Reports on a timely basis to various points about town so that they may be more easily attained by Sanbornton residents.

Amendments to the Zoning Ordinances as passed at 1984 Town Meeting.

1. Are you in favor of the adoption of amendment No. 1 as proposed by petition for the Town of Sanbornton Zoning Ordinance as follows: this amendment allows a new permitted use, Light Manufacturing Companies, in a portion of the Commercial Zone which is located along Bay Road and Route 3. The Planning Board approves of this amendment.

Yes..... 305

No..... 47

2. Are you in favor of the adoption of amendment No. 2 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance as follows: this amendment adds, as article XVII, Section T, a definition of Light Manufacturing Company.

Yes..... 315

No..... 35

3. Are you in favor of the adoption of amendment No. 3 as proposed by

the Planning Board for the Town of Sanbornton Zoning Ordinance as follows: this amendment adds, as article XVII, Section U, which defines and sets standards for Light Manufacturing.

Yes..... 312

No..... 34

4. Are you in favor of the adoption of amendment No. 4 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance as follows: this amendment reorganizes Article XII by striking out Section B, paragraphs (8)c and (8)d and reinserting them as Section C (1) and Section D (1) respectively, and deleting the words "and Land Control Subdivisions" from section D (1). This does not change the intent of the ordinance.

Yes..... 259

No..... 64

5. Are you in favor of the adoption of amendment No. 5 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance as follows: this amendment adds a new subparagraph (e) to Article XII section B, paragraph 4, and alerts applicants for gravel permits of the necessity of complying with State as well as Town requirements.

Yes..... 277

No..... 50

SANBORNTON PLANNING BOARD

NOTICE OF PUBLIC HEARING

PROPOSED AMENDMENTS TO THE ZONING ORDINANCE

There will be a Public Hearing on Friday, January 3, 1986, at 7:30 P.M. at the Sanbornton Town Hall to discuss the following proposed amendments to the Sanbornton Zoning Ordinance. The public is invited and encouraged to attend and offer their comments.

1. Amend Article IV, A (6); Article VII, A (6); and Article XVIII, A (7) to read:

"Set Back: The minimum distance between any right-of-way line and the nearest edge of any building or structure shall be 50 feet."

2. Amend Article IV, A (7); Article VII, A (5); and Article XVIII, A (8) to read:

"Side and Rear Set Back: No building shall be located nearer than 30 of the property line."

3. Amend Article IX, (4) to read:

"Set back: The minimum distance between any right-of-way line and the nearest edge of any structure shall be 50 feet and there shall be at least 30 feet between any structure and side and rear property lines."

4. Add to Article VIII, a new section E:

"Set back: The minimum distance between any right-of-way line and the nearest edge of any structure shall be 50 feet and there shall be at least 30 feet between any structure and side and rear property lines."

5. Add Article III, L:

Water Body Set Back:

There shall be a minimum of 40 feet between water's edge and any structure except single story structures used solely for storage of boats. This requirement shall apply to all waters which are natural or artificial impoundments of water of five acres or more in total area.

Water's edge shall be defined as the elevation shown on Geological Survey, U.S. Department of Interior. Where water's edge as delineated is in doubt or dispute, the burden of proof shall be upon the owner(s) of the land in question to establish proper location. At the request of the owner(s), the Planning Board may engage a professional hydrologist to determine the elevation of water's edge." The Planning Board may charge the owner(s) for all or part of the cost of the investigation. Water's edge delineation can be modified by the Planning Board upon receipt of findings of the detailed

Zoning Board of Adjustment 1985 Summary

CASE	REQUEST	ACTION
# 98 Terry & Stephan Smart	Variance from frontage requirement	Granted; but rescinded due to error
# 99 Estate of Agatha M. Egan	Variance to subdivide non-conforming lot	Denied; rehearing denied; appeal to superior court pending
#100 Leo Drouin	Appeal from administrative decision	Denied
#101 Louis & Carolyn Ferrari	Special exception – two-family dwelling	Granted
#102 John R. Barnes	Variance for frontage	Granted
	Variance for lot size	Denied
#103 Timothy Lewis	Variance from 10' setback	Denied
#104 Howe Bros., Inc.	Special exception – sand & gravel operation	Granted with conditions
#105 Edmund Bisson	Variance for commercial building in aquifer conservation district	Granted with conditions.

Respectfully submitted,
Warren F. Lake
Chairman

on-site survey.

6. Amend Article III, B by adding:

"Sand, gravel, rock, soil or construction aggregate may be removed only in the General Agricultural or Forest Conservation District, except that the Town may draw upon sources of gravel and other road building materials within any District for the purpose of public use within the Town as permitted by RSA 155-E."

7. Amend Article XII, B (4) by adding the following to XII, B (4) (b):

"that the operation will not have an adverse effect on Town maintained Roads. The Board of Adjustment must require adequate surety to repair Town Roads where adverse effect on Town Roads is in question. The Board must also require that operators improve Town Roads when in the opinion of the Board of Adjustment the Road is incapable of handling anticipated hauling. Additionally, the operation shall not adversely impact the normal flow of traffic or use of Town Roads by residents. The Board may impose restrictions on commercial vehicles hauling to and from the operation to insure this requirement is met."

8. Replace Article XIV with the following:

"Penalty:

Any violation of this Ordinance shall be punishable by a civil fine of \$100 for each day that such violation is found by a court to continue after the conviction date, or after the date on which the violator receives written notice from the Selectmen that he is in violation of the Ordinance, whichever date is earlier."

A copy of these proposed changes may be obtained at the Sanbornton Town Clerk's Office.

Nina C. Gardner
Nina C. Gardner, Chairman
Sanbornton Planning Board

December 18, 1985

Amendment #5. Are you in favor of the adoption of amendment No. 5 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance? YES 189 NO 166 Accepted

This amendment establishes a water body set-back requirement of 40 feet between water's edge and any structure, except boat storage facilities used solely for the storage of boats, on natural waters and artificial impoundments of five or more acres. A procedure for delineation of water's edge and the handling of disputes is included.

Amendment #6. Are you in favor of the adoption of amendment No. 6 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance? YES 179 NO 179 Defeated

* Important – See attached minutes

This amendment limits the removal of sand and gravel to the General Agricultural or Forest Conservation District. The town may draw upon sources of these materials in any district as permitted by RSA 155-E.

Amendment #7. Are you in favor of the adoption of amendment No. 7 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance? YES 218 NO 136 Accepted

This amendment provides that the Zoning Board of Adjustment may if deemed necessary require security to cover costs of repair or improvements to roads as a condition to approval of sand and gravel operation. It may also give consideration to the impact a project may have on the normal flow of traffic and the use of roads by residents.

Amendment #8. Are you in favor of the adoption of amendment No. 8 as proposed by the Planning Board for the Town of Sanbornton Zoning Ordinance? YES 211 NO 143 Accepted

This amendment brings our penalty clause into compliance with state statute and clearly establishes a civil fine for each day of violation.

Respectfully submitted,

Anne Ingemundsen, Town Clerk

Town Election Results March 11, 1986

Declaration of Results of Recount

March 24, 1986

Recount Article #6 – Zoning Ballot

On March 17, 1986, six days from the date of the Town Meeting of March 11, 1986, the Town Clerk received a petition requesting a recount of the ballots cast on Article #6 on the Zoning Ballot. The petition was signed by 11 voters. In accordance with RSA 40:4-c, the Clerk accepted the ten dollar (\$10.00) fee and subsequently set a date of March 24th, (seven days after the receipt of the petition) at 6:30 p.m. at the Town Office.

The hour of 6:30 p.m. on March 24, 1986 having arrived, the Town Clerk opened the Recount ie. the Selectmen, the Moderator and the Town Clerk. The ballots were counted and recounted; in both instances the results were 180 for acceptance of Article #6 and 178 against acceptance. The Amendment #6 is accepted.

Respectfully submitted
Board of Recount

Ralph W. Sleeper, Moderator
Thomas Salatiello, Selectman
Daryl A. Woods, Selectman
Warren Lake, Selectman
Anne Ingemundsen, Town Clerk

March 30, 1986

Five days having passed from the date of recount and declaration of results thereof, and no appeal having been taken to the superior court, we, the Board of Recount, certify to the Town Clerk that our declaration of March 24, 1986 is final.

Ralph W. Sleeper, Moderator
Thomas Salatiello, Selectman
Daryl A. Woods, Selectman
Warren Lake, Selectman
Anne Ingemundsen, Town Clerk

Bruce Brown	1
Jon Burbank	1
Ken Cegelski	1
Cynthia Dalton	1
Joanne Dover	1
Wayne Elliott	1
Bruce Fogarty	1
Don Foudriat	1
Raymond Gallagher	1
Dick Gardner	1
Edna Hansen	1
Roland Judkins	1
Don Kent	1
Tom Kuhner	1
Robert Laflam	1
Edwin Lebel	1
Sandy Leighton	1
Earl Leighton	1
Pauli Novicki	1
Charles Powell	1
William Shepard	1
Robert Stoecklin	1
William Whalen	1
Barbara Whetstone	1
Warren Wilson	1

AMENDMENTS TO THE ZONING ORDINANCE

Amendment #1

Amend Article XII-B-(4) to define the separate enforcement powers of the Selectmen and the ZBA (Zoning Board of Adjustment) and preserving the applicant's right of appeal in the regulation of land use for excavation or removal of earth materials, such as gravel pits.

YES - 325 NO - 85

Amendment #2

Amend Article III-E to correct a typographical error on the 1993 Town Meeting Ballot. Reference was made to a nonexisting paragraph in the zoning ordinance.

YES - 379 NO - 33

MINUTES OF THE 1994 TOWN MEETING
March 9, 1994
Town of Sanbornton
State of New Hampshire

Prior to the opening of the meeting, Richard Gardner and Scott Taylor were appointed assistants to the Moderator and took the oath of office.

Pursuant to the warrant for the 1994 Town Meeting, the Moderator, Donald Foudriat, called the meeting to order at 7:00 PM. Following the presentation of colors by the Boy Scouts, the pledge of allegiance and the invocation, led by Reverend Leslie Norman, the Moderator requested that those assembled stand for a moment of silence in respect for Ralph Sleeper, our former Moderator, who passed away in July, 1993.

The Moderator next introduced the Administrative Assistant, the Selectmen, the Town Clerk, and the members of the Budget Committee.

The results of the previous day's voting were read.

Mr. Foudriat stated that the Moderator's rules of procedure for governing the meeting would include the applicable NH RSA's and Roberts Rules, 1989 edition, as necessary. Additionally, he read a list of rules which he proposed and which was approved by the assembly.

The following motion was made by Brian Gallagher, Chairman of the Budget Committee: To see if the Town will vote to reorder the following warrant articles due to technical and other difficulties. (The revised order had been distributed to the voters present) The motion failed.

Article 1. Acceptance of Grants

Shall the town accept the provisions of RSA 31:95-b providing that any town at an annual meeting may adopt an article authorizing indefinitely, until specific rescission of such authority, the selectmen to apply for, accept and expend, without further action by the town meeting, unanticipated money from a state, federal, or other governmental unit or a private source which becomes available during the fiscal year?

Article # 1 was accepted as read.

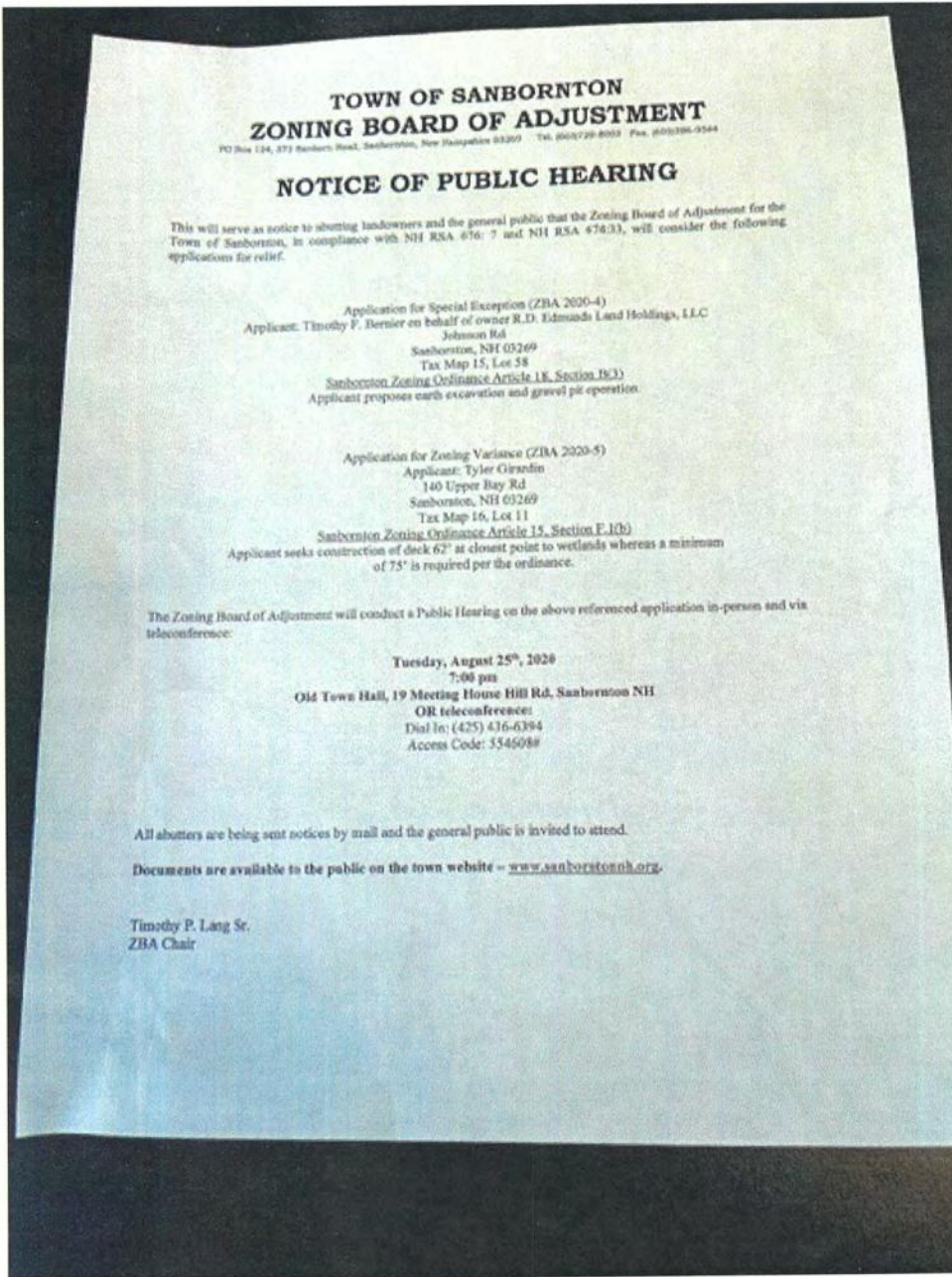
Article 2. Acceptance of Personal Property

To see if the town will vote to authorize the board of selectmen to accept gifts of personal property which may be offered to the town for any public purpose, pursuant to RSA 31:95-e. The selectmen must hold a public hearing before accepting such gift, and the acceptance shall not bind the town to raise,

EXHIBIT B

Pat Panciocco

From: Julie Lonergan <julielonergan@myfairpoint.net>
Sent: Tuesday, February 7, 2023 9:18 AM
To: Pat Panciocco
Subject: Notice of public hearing SANBORNTON



Sent from my iPhone

EXHIBIT C

SANBORNTON ZONING BOARD OF ADJUSTMENT

P.O. Box 124

Sanbornton, NH 03269-0124

RULES OF PROCEDURE

Pursuant to RSA 676:1 and the Zoning Ordinance of the Town of Sanbornton, New Hampshire, the Sanbornton Zoning Board of Adjustment adopts the following Rules of Procedure:

Article 1 – Title, Adoption, Amendment

- 1.1 These rules may be cited as the Sanbornton Zoning Board of Adjustment Rules of Procedure.
- 1.2 These rules may be amended by a majority vote of the Board and shall be on file with the Town Clerk for public inspection.

Article 2 – Membership, Term of Office, Officers, Vacancies

- 2.1 Pursuant to RSA 673:3, the Board of Adjustment shall consist of five regular members who shall be residents of the Town and who shall be appointed by the Selectmen.
- 2.2 Pursuant to RSA 673:6, not more than five regular members who are residents of the Town shall be appointed by the Selectmen to serve on the Board. Alternate members shall be named by the Chairman to act in a regular member's absence or disqualification.
- 2.3 Pursuant to RSA 673:5, the term of a regular board member and the term of an alternate member shall be three years.
- 2.4 Pursuant to RSA 673:13, the chairman may recommend a member be removed from the board following four unexcused missed meetings within the period from July 1 to June 30.
- 2.5 Pursuant to RSA 673:8, officers shall be elected annually at the first meeting after July 1. The board shall elect a Chairman and a Vice Chairman by majority vote of the Board. The Chairman and the Vice Chairman shall be members of the board. Any Officer shall be eligible for re-election.
- 2.6 Vacancies in membership shall be filled by appointment by the Selectmen for the expired term.

Article 3 – Duties of Officers, Minutes

3.1 The Chairman shall preside over the meeting and shall be responsible for conduct and decorum of the meeting. The Chairman shall have the responsibility to ensure that all parties receive a full and fair hearing before the Board.

3.2 The Vice Chairman shall preside over meetings and assume the duties of the Chairman in the absence of the Chairman.

3.3 The Clerk shall be responsible for the maintenance of board minutes and records which shall be filed at the Town Office.

3.4 The Board of Adjustment shall keep minutes of its meetings, in accordance with the requirements of RSA 91-A. Minutes shall be considered a record of sufficient evidence on which to base its decision.

3.5 Written minutes shall be open to public inspection not more than five business days after the meeting as required by RSA 91-A:2, II.

Article 4 – Meetings, Special Meetings, Notification

4.1 Meetings shall be held as necessary on the fourth Tuesday of the month.

4.2 Special meetings of the board shall be held at the call of the Chairman or majority vote of the board.

4.3 All meetings of the board shall be held at the Sanbornton Town Offices unless the board votes to meet at some different place.

4.4 Regular meetings shall begin at 7:00 p.m. with general business. All Public Hearings shall begin at 7:15 p.m. Following the Public Hearing, decisions shall be made on the appeals and any other business shall be acted upon, prior meeting minutes approved by vote, and the next hearing date fixed.

4.5 Notice of Public Hearing shall be published in a newspaper of general circulation in the area not less than 5 days before the fixed hearing date, per RSA 676:7.

4.6 Notice of the Public Hearing shall be posted in two (2) public places within the town of Sanbornton not less than 5 days before the fixed hearing date.

4.7 Notice of the Public Hearing shall be filed the Sanbornton Town Clerk not less than 5 days before the fixed hearing date.

4.8 Applicants and all abutters shall be notified of the Public Hearing by certified mail not less than 5 days before the fixed hearing date, per 676:7.

Article 5 – Quorum, Voting, Meeting Conduct

5.1 In accordance with RSA 673:10, a majority of the membership shall constitute the quorum necessary in order to transact business.

5.2 In the event that less than five members are in attendance, an applicant shall have the right to either proceed with their case or postpone the hearing until such time when the majority of the membership is in attendance. In the case of a postponement, a new public hearing date shall be fixed at the time of postponement and no further notification will be necessary.

5.3 An affirmative vote of the majority of members voting on a motion shall be sufficient for passage of the motion.

5.4 When the vote on a motion is evenly divided, the motion shall be deemed to have been defeated.

5.5 Unless modified by vote, the general order of the public hearing shall be as follows:

- a) Call to order, roll call of members
- b) Reading of Public Notice, report on public and personal notification
- c) Presentation of appeal by applicant or representative
- d) Testimony of any favoring appeal
- e) Testimony of any opposing appeal
- f) Rebuttal by applicant, discussion
- g) Summary by Chairman of the facts of the appeal
- h) Hearing closed

5.6 Pursuant to RSA 673:14, no members shall participate in deciding on any appeal if the member has a direct interest which differs from the interest of the other citizens, or if that member would be disqualified to act as a juror in the trial of the same matter in any legal action. Knowledge of the facts will not disqualify the member.

Article 6 – Powers of the Zoning Board of Adjustment

6.1 Pursuant to RSA 674:33, the Zoning Board of Adjustment shall have the power to hear and decide appeals if it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance.

6.2 Pursuant to RSA 674:33, the Zoning Board of Adjustment shall have the power to authorize such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

6.3 Pursuant to RSA 674:33, the Zoning Board of Adjustment shall have the power to, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All such exceptions shall be made in harmony with general purpose and intent of the zoning ordinance and shall be contained in the ordinance.

6.4 Pursuant to RSA 674:33, the Zoning Board of Adjustment shall have the power to grant an equitable waiver from the physical layout or dimensional requirement imposed by the zoning ordinance for a lot or other subdivision of land, or structure thereupon.

Article 7 – Application, Public Hearing

7.1 Any person seeking a hearing before the board shall submit an application on a form provided by the Board. The completed application shall be submitted by the first business day of the month in which the applicant wishes their appeal to be heard.

7.2 An application fee of \$50 dollars payable to the Town of Sanbornton shall accompany the application.

7.3 The applicant shall provide pertinent plot plans to include:

- a) Scale drawing
- b) Lot dimensions
- c) Any bounding streets and right-of-way widths
- d) All existing buildings with their dimensions and setbacks
- e) All proposed buildings, structures or additions with dimensions

7.4 The applicant shall provide envelopes addressed to abutters, completed certified slips for each envelope, and certified postage attached. Two such envelopes shall be provided for the applicant allowing for notice of hearing and Notice of Decision. Two such envelopes shall be provided for the property owner if different than the applicant.

7.5 Any person who can demonstrate that he is directly affected by the application under consideration shall be heard at the public hearing. The board may hear any such other persons as it deems appropriate.

7.6 Members of the board may ask questions at any point during testimony, and may request any party to the case to reappear.

7.7 Any person who appears shall be required to state their name and address, and indicate whether they are a party to the case or an agent of a party to the case. Any person who desires to ask a question of another party must do so through the Chairman.

Article 8 – Decision

8.1 The decision of the board, including the vote of each member, shall appear as part of the written minutes.

8.2 A written decision shall be mailed to the applicant and shall be available to the public within five (5) business days (excluding the weekends) after the decision is made, as required by RSA 676:3. Copies of the decision shall be filed with the Town Clerk and provided to the Board of Selectmen and the Planning Board.

8.3 Conditions may be attached to the granting of any approval.

8.4 If the application is not approved, the board shall provide the applicant with written reasons for the disapproval, as part of its decision.

Article 9 – Rehearing

9.1 Within 30 days after any order or decision of the board, any person directly affected thereby may apply for a rehearing, specifying the grounds therefore, per RSA 677:2.

9.2 Upon filing of a motion for a rehearing, the board shall, within 30 days, either grant or deny the application or suspend the decision complained of, pending further consideration, per RSA 677:3.

9.3 If a rehearing is granted the person applying therefore shall submit an application per Article 7 herein.

9.4 Pursuant to RSA 677:4, any person aggrieved by a decision to grant or deny a motion for rehearing, may petition the Superior Court within 30 days of such decision.

Article 10 – Gravel Pit Inspections

10.1 On-site inspections of Town permitted gravel pits shall be conducted semi-annually in early fall and in early spring.

10.2 A quorum of 3 members of the Board shall be present for on-site gravel pit inspections, minutes shall be taken per Article 3 and RSA 91-A.

10.3 Records of such inspections shall be filed with the corresponding gravel pit permits.

Adopted by the Sanbornton Zoning Board of Adjustment on November 29, 1983

Amended: December 20, 1983

May 27, 1986

February 10, 1988

November 17, 1993

June 23, 1999

July 23, 2013

August, 2015

October 23, 2018