

	<p style="text-align: center;"> <b>RINDGE BOARD OF ADJUSTMENT</b>  <b>30 PAYSON HILL ROAD</b>  <b>RINDGE NH 03461</b>  <b>PH. (603) 899-5181 x 100 FAX (603) 899-2101 TDD</b>  <b>1-800-735-2964</b>  <b>www.town.rindge.nh.us</b> </p>
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## **PUBLIC HEARING MINUTES** **January 22, 2019 – Approved 2/26/19**

Regular members: Janet Goodrich, Marcia Breckenridge, Phil Stenersen, Bill Thomas, Cynthia Childs

Alternates: Joe Hill, Marty Kulla, Susan Wessels

ZBA Clerk: Michele Christian

Absent: Phil Stenersen

Recusals: None

Others Present: Code Enforcement Officer Dave DuVernay, Richard Kohlmorgen, Glenn Labrie, Ken Smith, Kelen Geiger, Deborah Opramolla, Judy Unger-Clark, J. Craig Clark, Paula Philips

Chairman Goodrich convened the meeting at 7:00 PM with the Pledge of Allegiance.

Sitting on this case will be Goodrich, Breckenridge, Thomas and Childs. Alternate Hill will sit in for Stenersen who is absent.

Kulla read the case before the Board:

**Case # 1119: Richard Kohlmorgen, 220 Woodbound Road, Rindge, NH 03461 for property located at Tax Map 11, Lot 1-1 for a Variance as specified in the Zoning Ordinance Article V, Section A to permit earth excavation of approximately 16,000 cubic yards in the Residential-Agricultural zoning district.**

Rick Kohlmorgen presented his case before the board.

There will be approximately 800 loads coming out of the pit which will be delivered to Towns of Rindge, Jaffrey, New Ipswich and Fitzwilliam. Goodrich asked the board if they had questions. Hill stated that he has been approved multiple times and wanted to know what has changed. Kohlmorgen stated that nothing has changed. Wessels stated that she remembers that there were people who walked along the road that were concerned about the trucks. Bruce Coll submitted a letter about the truck traffic. He also stated in the letter that the drivers will not use their engine brakes. Kulla stated that he lives in the neighborhood and he did not see any difference until the deadline to remove the product came up and then there was some significant truck traffic. In August of 2017 there was an anomaly and there were more trips from the gravel pit. This is a new case – Goodrich asked if there were questions from the audience. Paula Phillips lives on Jowders Cove Road and she stated that she hasn't seen a lot of truck traffic. She stated that her street had been made up of summer vacation homes but now most of the homes are year round. She asked if it would affect the stream that goes into the lake. Kelen Gieger said that this is a hearing for a variance that has been previously denied. She said that part of the reason that people are upset, is because there was material taken out of a portion of the pit that wasn't part of the land in question. Geiger said that it is a residential area and people want to enjoy their summer and have the opportunity walk freely. Kelen also stated that if it is 30 trucks a day that is a truck on the road every ½ hour. He stated that there were trucks in and out every 20 minutes. There has been a burden placed on the boards in the town of Rindge. Breckenridge asked who filed the cease and desist. Kohlmorgen was asked by the Planning Board to stop because he was taking material out of a portion of the pit that needed to be reclaimed. There was no cease and desist order. Paula Phillips stated that she understands that this is a business for Kohlmorgen and maybe if there could be restrictions on the months of July and August when the summer residents are here and the children are out of school. Ken Smith stated that there were a number of restrictions on the previous variance from Con Comm and Planning. The restrictions were broken. Smith stated there was more material taken out of the pit than what was agreed upon in the variance. He stated that there were trucks in and out every 20 minutes. There has been a burden on the boards in the town of Rindge. Smith said that it heated up because there were loads taken out in October of 2015-2017 that were never recorded. Smith stated that he has notes from February 2017 and the permit was for 2600 yards and over 9000 were taken.

Goodrich stated that there was a letter that Con Comm had met with Kohlmorgen, and the pit had been reclaimed. Smith that the Conservation Commission should not have had to go and point it out that there were errors made. Smith stated that

that the number of loads that were taken exceeded what the variance was for. There were also trucks taken out of the pit. Smith stated that there were restrictions placed on the previous variance and they weren't followed. Dave DuVernay asked if there was any documentation of the numbers from the state. Smith provided the state numbers to the Board. In 2016 Bob Van Dyke was the excavator at the time, and they did get the pit reclaimed. Kohlmorgen stated that in 2016 when the land was being reshaped there was a pile in the pit that was taken out by Mr. Van Dyke. Glen Labrie stated that the pile that was taken from the pit was 4,000 cu yards. Craig Clark asked about the traffic and would it be a consideration for the ZBA decision. He stated that on Fitzgerald Road they had a logging operation and they had to endure this.

Deborah Opramolla asked if there could be a compromise with some of what needs to go on. She lives on Middle Winchendon Road. Goodrich stated that the balancing test is that a land owner should have the right to do what they wish within reason. LaBrie stated that he wanted to know if there was an error made by the Board. Goodrich stated that this was a new case and it does not take into consideration the case that was appealed. LaBrie stated that the number of trucks does alter the neighborhood. He also stated that there is no benefit to the general public. LaBrie went through the five points for variance. They drove earlier in the day than when they were supposed to. LaBrie takes exception to the town's decision to allow 30 trucks per day. He stated that the town continually promised that this would be the last time. Labrie stated that he went to the roadway committee and they stated that there is no way to prove that there was engine braking. He stated that this is a commercial operation in a residential district. DuVernay stated that Labrie is misstating the hardship law. The references are more than 4 years out of date. He has also substituted his opinion for the opinion of the board. LaBrie also stated that he takes issue with the way notices are posted. Kulla said that there are 16 local pits. Rindge does not allow excavation without a variance.

Hill made a motion to move to deliberative session. Breckenridge seconded. Vote: Yea 5-0-0

#### VARIANCE DECISION TREE

1. The Variance would be contrary to the public interest because it negatively affects the health, safety and welfare of the residents. Vote: Yea 5-0

2. Granting the variance would not do substantial justice because the noise of additional truck traffic on a secondary road and danger to the residents is significant. Vote: Yea 5-0
3. The variance would not be consistent with the spirit and intent of the Rindge Zoning Ordinance because the volume of heavy truck traffic on a narrow secondary road in a residential district negatively affects the health, safety and welfare of the general public. Vote: Yea 5-0
4. Granting the variance would diminish surrounding property values because the volume of truck traffic does not provide the rural quiet that buyers would prefer in a residential area. Vote: Yea 4, Nay 1 Goodrich
5. Special conditions do not exist on the property that result in unnecessary hardship because the loss to the landowner is outweighed by the gain to the general public. Vote: Yea 5-0
- 5a. Non-applicable Vote: Yea 5-0
- 5b. The proposed variance would not be a reasonable one because the negative impact on the quality of life in the neighborhood and it does not prohibited the property owner from other reasonable use of his property. Vote: Yea 5-0

Hill moved to DENY the variance, seconded by Thomas. Vote: Yea 5-0  
**The variance has been DENIED.**

**Other Business:**

Goodrich stated that a resident filed a grievance. Judy Unger-Clark stated that she filed an appeal on Case #1118. DuVernay asked what the date was on the letter. Goodrich stated that it was December 27, 2018 at 3:37 PM, which was the 30<sup>th</sup> day in which to file an appeal. Unger-Clark stated that she submitted another letter on January 17<sup>th</sup> after a conversation with Goodrich. At that time, Goodrich stated that Unger-Clark would have had to file a formal application with the \$175.00 fee. Unger-Clark stated that she had never received a formal application. She stated that she did not have any follow up from a town official and did not know at the time when she filed the appeal letter that she had to do anything further. The executive secretary sent a copy of the application to Unger-Clark, but she stated

that she never received it. Unger-Clark stated that she has proof that she did not receive it until January 15<sup>th</sup>. She said that she went through every computer in the house. That night was the planning board meeting and because she did not have an application her appeal was null and void. DuVernay asked what was null and void. Unger-Clark stated her appeal was null and void. Goodrich stated that on the 27<sup>th</sup> of December she sent a letter not an application with a fee and this was done ½ hour before the town offices closed. Unger-Clark said that she had no idea how to do any of this and stated that both an e-mail copy and a hard copy was delivered to the town office. Unger-Clark read a portion of her letter. Her complaint was that no town official helped her. Goodrich stated that a formal appeal of a decision an individual needs to have standing to file. Goodrich read the RSA regarding standing. Goodrich asked Unger-Clark how she was impacted differently than the public at large which usually applies to an abutter. Goodrich stated that she lives on Fitzgerald Drive which is on the other side of town. Unger-Clark stated that it is a shame that a citizen regardless of where they live in town cannot file an appeal if they feel they may be impacted. Unger-Clark wanted to know why she did not hear this before. Goodrich stated that she came in to the office on the 30<sup>th</sup> day ½ hour before the town office closed and there was nobody from the ZBA available at that time. DuVernay stated that it is irrelevant because Unger-Clark either has standing or she doesn't. Unger-Clark said that if this had been explained then she could have worked with other people to file the appeal. In order for the ZBA to address this one of the board members would have had to be at the office at that time. Goodrich reiterated that the question is whether or not Unger-Clark has standing. Unger-Clark stated that someone should have provided the application at the time she came into the town office. She stated that she could have gone to the people on Dale Farm Road and filed the appeal with them. Thomas stated that the people from Dale Farm Road were here the night of the hearing for case #1118 and they knew that they had 30 days to file an appeal, they were the abutters who have standing to file.

Deborah Opramolla said that she never heard the part about the appeal. Thomas said that it was stated at the close of the case. Opramolla said that she didn't hear it. She said that the process is broken. Opramolla said that the grievance is with regard to the process. DuVernay said that this board can only deal with the law. Opramolla said in this whole process is broken because the abutters are being shifted from one board to another. Thomas stated that ignorance of the law does not mean that you don't have to obey the law. DuVernay stated that RSA 677:2 requires an appeal within 30 days. Opramolla then made a threatening comment to DuVernay. Goodrich brought control back to the meeting. Goodrich stated that we

don't have an official dedicated to notifying all the people in a community if an individual has a question it is up to them to come and ask.

Goodrich stated that even if the application had been given to Unger-Clark we would have processed it but we still would have had to determine whether or not there was standing. Breckenridge stated that if the law on standing was attached to the application and explained would it have solved the problem. Unger-Clark stated that she thought the letter was the appeal. Susan Wessels stated when the board states that an appeal must be filed within 30 days and the appeal applications are in the executive secretary's office that may give people a starting point. Kelen Geiger asked if the appeal form is on the website. The clerk stated that all of the applications are on the ZBA website.

Hill stated that the notice of decision of October 23, 2018 on Kohlmorgen should say that the Rehearing was granted and it was not signed.

Approval of Minutes of November 27, 2018

Hill gave his corrections: page 5 vote was 5-0-0, page 6 Roberta Oeser not just Roberta, page 7 there were 2 votes of 4-1-0 and the voter's need to be noted.

Hill made a motion to accept the minutes of November 27, 2018 with revisions, seconded by Thomas. Vote 5-0-0

Reviewers for February: Hill and Goodrich

Cutoff date for applications is Tuesday, February 5, 2019 for hearing on February 26, 2019.

Thomas made a motion to adjourn, seconded by Hill. Vote: 5-0

The meeting adjourned at 9:35 PM

Respectfully Submitted,  
Michele Christian, ZBA Clerk



