

TOWN OF SOUTH THOMASTON

APPLICATION FOR VARIANCE OR  
APPEAL TO BOARD OF ZONING APPEALS

Name of Appellant Approved Residents of S. Thomaston by Carolyn Neagle

Mailing Address 125 Ledge Rd.

City or Town S. Thomaston, ME 04858 Maine 04858

Telephone 354-5044

Name of Owner Approved Residents

The undersigned requests that the Board of Appeals consider <sup>All</sup> ~~one~~ of the following:

1. An Administrative Appeal. Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- an error was made in the <sup>Approval</sup> denial of the permit
- the <sup>Approval</sup> denial of the permit was based on a misinterpretation of the ordinance
- there has been a failure to approve or deny the permit within a reasonable period of time
- other see attached

Please explain in more detail the facts surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

**received**  
**8-7-17**

12:17pm

TO: Town of S Thomaston Planning Board  
Town of S Thomaston Select Board

NOV 17 2016

RE: Operation of a gravel quarry at or near 532 St George Road in S Thomaston Maine.

We, the undersigned residents of South Thomaston, are registering our strong opposition to the establishment of a working quarry operation at the above location in S Thomaston. We sincerely believe that such an operation would constitute a nuisance. Constant dust/silica pollution from loading and transporting the rock would be detrimental not only to our air quality and therefore our health, but also a possible 5% to 20% decrease in property values in a wide radius around the area, as shown on the attached study from Purdue University. Increased truck traffic on busy Route 131 should be considered as additional cost for maintenance. Also, though we have been told there is no plan at this time to do blasting, we feel that it will be inevitable in future operations, and therefore a real possibility of damage to property in a wide surrounding area including but not limited to damage to the water table, underground foundation cracking, as well as above ground glass damage. Please protect the citizens of South Thomaston and reject the proposal.

NAME	ADDRESS IN S THOMASTON	DATE
Carolyn Neagle	125 Ledge Rd. 04858	11-5-16
Paul Neagle	125 Ledge Rd 04858	11-5-16
W.P. Bailey	147 LEDGE RD	11-5-16
LORETTA/BILL BAILEY	147 LEDGE ROAD	11/5/16
Ahura / (Bozina)	163 Ledge Road	11/05/16
Thomas A. Bozina Jr	163 Ledge Road	11/05/16
<del>Bill Bailey</del>	180 LEDGE ROAD	11/05/16
Margaret Schwamb	180 Ledge Rd	11/05/16
Clay Manley	168 Ledge Rd.	11-5-16
W.D. Manley	168 Ledge Rd.	11/05/2016
Kenneth Huder	178 Ledge Rd	11-06-2016
B.S. Hoemig	124 Ledge	11-6-2016
John + Joanne Rogers	34 CLIFF	11-6-2016

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Town of S Thomaston Select Board**

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<b>NAME</b>	<b>ADDRESS IN S THOMASTON</b>	<b>DATE</b>
David W. Edwards	111 LEDGE RD	11-7-16
Kathryn B. Gibbons	111 LEDGE ROAD	NOV. 07. 2016
Jessie Z. Pacey	Lot #5 (off) W. Rd.	NOV 10-2016
Ossebeth Bealock	154 LEDGE RD.	11/10/16
Wileen D. Bealock	154 LEDGE RD	11/10/16
AMY	148 ledge rd	11/11/2016
Jack MARCHANT	107 ledge Rd	11-12-2016
Ed. Reed	77 ledge rd	11/12/2016
Wanda E. ...	45 SYLVIA'S WAY	11/13/2016
THOR TOR BATTY	ST SYLVIA'S WAY	11/13/2016
GEORGE A. SMITH	26 SYLVIA'S WAY	11/13/2016
Michelle Bradley	11 Sylvia Way	11/13/2016
Nancy Goshin	26 Sylvia's Way	11/13/2016

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NAME	ADDRESS IN S THOMASTON	DATE
Hathlaon LaBree	10 Ledge Rd	11/13/16
Kevin LaBree	18 Ledge Rd.	11/13/16
Warren Marshall	101 LEDGE	11/13/16
Pamela Jones	40 Ledge Rd	11/15/16
Ronald E. Jones	40 Ledge Rd.	11/15/16
Caitlin W. King	37 Ledge Rd.	11/15/16
Thomas Thompson	37 LEDGE RD	11/15/2016
	179 Ledge Road	11/15/16

APPEAL OF GRAVEL PIT

RESPECTFULLY

Paul Chapman X

486 St. George Rd  
SO. THOMASTON, ME 04858

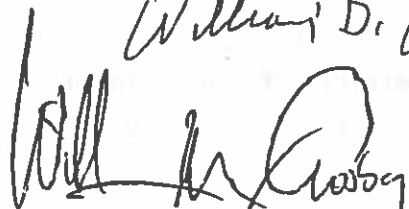
Jisa Elliot-Jacuman

486 St. George Rd  
SO. THOMASTON, ME  
04858

Meghan Briggs

Sandra D Atwood  
William D. Atwood

168 Drury Lane

  
WILLIAM M CROSBY

101 DRURY LANE  
SOUTH THOMASTON, MAINE

Patricia Crosby  
PATRICIA CROSBY

"

Colleen Fickman  
Marilyn Hill  
JH M. Hill

18 Drury Lane, So Thomast.  
91 Drury Lane, So Thomast  
" " "

SVEN LAAMANN

486 SAINT GEORGE RD.  
SO. THOMASTON



**To the Board of Appeals**  
**South Thomaston, Maine 04858**

**Appellant, Aggrieved Residents  
of South Thomaston, Maine**

Appeal of the Decision of  
the Planning Board on  
January 12, 2017

**Appellee, Planning Board Committee  
of South Thomaston, Maine**

Filed February 7, 2017

Now come the aggrieved residents of South Thomaston, Maine in opposition to the Planning Board's approval of a Special Exception application for Lot 3, Map 12 in favor of Curtis Adolphsen, agent for the Young Trust and gravel pit operator, as set forth in this appeal. First and foremost, the aggrieved residents ask this Appeal Board to allow us to submit and/or amend this Appeal with additional documents as they become available to us under the Public Records Act. Exhibit A.

**A. History and Finding of Facts:**

1. An application for a Special Exception was filed by Jean Young owner of the land in September 2016. Apparently, the land was put in a trust after Roger Young passed away in March 2016. Maxwell Young is the Trustee for the Trust. Exhibit B
2. A second application for a Special Exception was then filed by Max Young, the trustee for the Young Trust and son of Jean Young. Exhibit C
3. A third application for a Special Exception was filed by Curtis Adolphsen, acting as agent of Max Young and future gravel pit

operator. I guess Jean Young's application was withdrawn from consideration, but we cannot find any evidence of this in the town records. Max Young's initial application request may have been withdrawn, but we cannot find any evidence of this in the town record. The meeting records reflect that the town was referring to the application of Adolphsen in all the meetings. I find this confusing as they made their decision on the Max Young application.

4. First hearing on this Special Exception Application matter, was heard on August 18, 2016 after Curtis Adolphsen applied for a Special Exception application with the town. This matter was also on the agenda for the September 15, 2016 hearing. A Public Hearing was held on September 29, 2016 and minutes of the meeting were not kept. The fact that a Public Hearing was held before the application was deemed complete or approved doesn't make any legal sense. Another hearing was held on October 20, 2016, on the application as the applicant had not completed the required information on the form. A hearing was held on November 17<sup>th</sup>, 2016 to continue to work on the application with the applicant as the applicant had still not provided the necessary and required information. December 15, 2016 a hearing was held to continue to work on the applicant's incomplete application. December 5, 2016 was the first time the applicant Adolphus e-mailed any answers to the questions the Board had concerning the application to the COD. This was an abuse of the board's time not answering the required questions. However, the board stated at the Public Meeting that they were not going to have meeting after meeting on this application issue. December 15, 2016 the last hearing was held and the board further questioned the applicant about blanks in the Special Application request and after a long discussion with the applicant the Board deemed the application complete. Then the Planning Board voted January 12, 2017 to approve the application and grant the Special Exception.

Exhibit D

**Findings of Facts and Conclusion of Law:**

This is an oral accounting of the Findings of Facts and Conclusion of Law, the Board found at the January 12, 2016 hearing.

1. The Board found that the Town had jurisdiction to hear this matter and that Curtis Adolphsen had standing to request a Special Exception application from the Town.
2. The gravel pit operation must not be visible from Route 131 and must be screened from neighbor's view. But, if the trucks needed to be seen from the road for security purposes that would be allowed.
3. It must be set back at least 50 feet from property lines and 150 from foundations of existing dwellings.
4. It must be no deeper than five feet above the water table, and the owner or agent is required to dig a test pit or well to determine such water table.
5. Any blasting at the pit would be considered an increase in the scope of the project and would have to go back to the planning board for approval to blast.
6. Staff is limited to 3 employees. Any more than 3 would be out of the scope.
7. The hours of operation are Monday to Friday from 7:00 a.m. until 5:30 p.m. only in daylight hours (no operation after official sunset.) They will also operate Saturdays from 8:00 a.m. to 12:00 p.m. There will be no operations on Federal Holidays.



8. Glare from lights will be controlled so that the lights will not adversely affect neighbors. Motion detectors activated lights will be allowed for safety and security purposes.
9. The noise heard at the property lines is limited not to exceed 65 decibels. The owner or agent is responsible for providing the town with sound measuring equipment to enforce this.
10. Dust and dirt are to be controlled and contained on the property.
11. Rock crushing operations are to take place no more than three times per year, no more than 21 days' total.
12. Truck loads are limited to 20 per day and log books of the trips must be maintained. That would be 120 truckloads per week.
13. The Board found that this mining project would not negatively affect neighboring property values. The board declined to recognize the study of the economic impact gravel mine has on property values. The board said that the study was from out of state and does not reflect this pit so did not consider it.  
Exhibit E
14. The Board found that there were 6 other mining pits along Route 131 and they had no negative affect on the area. They did not state if the mining pits were closed and when.
15. The Board found that their hands were tied as to their decision and they had to allow the Special Exception as the application was complete.
16. The Board said that the Board of Appeals hand were tied also and that it would not make any difference if there was an appeal to the Board of Appeals as they couldn't do anything about their decision.

17. The board commented that the DOT had approved the road plan for the gravel pit, when in fact the DOT only approved the driveway entrance to the property. Exhibit F

- **An error was made in the approval of this permit.**

1. The Planning Board erred in their decision as there was no public benefit. In addition, to approve a Special Exception for a mining operation so that one individual (Young) could pay their "\$3500" property tax – the approved mining operation will affect those in Town Maps 7, 11 and 12 whose combined tax payments to the town exceed \$453,488. Exhibit G
2. During the numerous meetings granted to Adolpheson by the Board he states that he will never exceed 5 acres in mining operations. He never once addressed what happens if he operates the pit at exactly 5 acres. If he opens the pit to 5 acres or more, he would be required to file a Notice of Intent to Comply with the Maine DEP. Now, in the Planning Board's decision – they state that Adolpheson's pit will be "LESS" than 5 acres. During all the meetings, the term used was that he would never exceed 5 acres. This discrepancy and detail is hugely important in the regulation and adherence to Maine DEP laws. During all debates and meetings, it was always stated that he would never exceed 5 acres. This is in error. All discussion SHOULD have accurately and truthfully stated that he would always be less than 5 acres. Exhibit H
3. Referencing the Town of South Thomaston Land Use Ordinance, page 7 Section G Special Exceptions number 1a. Application for Special Exception Permit states – **"Clearly specify the location of the proposed use, including street address, tax map and lot number, and a location map at a scale no smaller than the tax map; Also, in the actual application, site plan, it clearly demands that the applicant "DRAW TO A SCALE OF ¼ INCH (ONE SQUARE) = 10 FEET."** The applicant submitted a vague map and has scribbled on it, "not to scale." This is in violation of the demands of the Land Use Ordinance and clearly is not drawn to the demanded scale. The application should be deemed invalid due to this violation. The application is clearly non-compliant. The Planning Board either follows the regulations of the Town or does not. Exhibit I

4. The Maine Department of Environmental Protection, Bureau of Land Resources site inspection was specifically stated by Dustin Dorr, "The owner's agent, Curtis Adolphson, requested the field determination to ascertain whether permits would be required from the Department (DEP) for road improvements including culvert crossings, resurfacing, and the removal of a beaver dam." The DEP never conducted a survey or site inspection for a gravel pit or a mine. In the Planning Board meetings, they stated that Adolphson had a DEP inspection and approval AS IF the DEP did a site inspection for a mine. This was never accomplished and can be seen clearly in the attached paperwork. The public were misled and the DEP never had a chance to weigh in on a mine or pit operation because they were never asked specifically to do so. Exhibit J
  
5. The Maine DOT inspection was only for the Driveway/Entrance Permit. The DOT at the time of the inspection did not know that 120 heavy trucks per week would be lumbering up and down Route 131. Even the actual DOT paperwork provided in the approval of the Driveway states, "#10. Notify the Maine DOT of a proposed change of use served by the driveway when an increase in traffic flow is expected to occur." The failure to get the Maine Department of Transportation involved in a Planning Board decision to allow 120 heavy trucks coming and going from a heavily travelled section of Route 131 was an error. Exhibit K

- **There has been a failure to approve or deny the permit within a reasonable period of time.**

The Planning Board failed to approve or deny a permit within a reasonable amount of time. The Maine Townsman April 1998 by Clifford H. Goodall, Esq. states that "Once the hearing is over, a decision must be made within a reasonable, period of time."

There was a failure to act by the Planning Board within a reasonable period of time. Another argument will be made that the board acted this way with a bias towards the applicant's family but that will be described later. This argument proves the Planning Board failed in acting timely.

This occurred because the application was incomplete and the Planning Board each month attempted to get more information from Mr. Aldophsen. Adolphson did not volunteer the information. He claimed that he was unable to be more specific about the gravel pit operation since has had never operated a pit before and the Board member repeatedly said they knew nothing gravel pit operations. Granting the permit without due diligence on a "we will all learn together as we go", constitutes extreme negligence.

The applicant was so unspecific about what needed to be in the application the Planning Board even e-mailed him requesting information that was needed to complete the application. In effect the Planning Board filled in the blanks for the applicant. The initial application was submitted to the Planning Board on August 18, 2016. It was further reviewed at the September 15, 2016 Planning Board meeting. The Public Hearing was held September 29, 2016 even though the application was not factually complete. Mr. Aldophsen was asked questions to complete the application at the October 20, 2016 meeting, also at the November 17, 2016 meeting, and at the December 15, 2016 meeting. It was at the December 15, 2016 meeting that the application was finally ruled complete. January 12, 2017 the Planning Board approved the application. The process used excessive amount of time taking over five months to complete. This timeline is not a reasonable period of time. The applicant occupied over seven meetings of the Planning Board's time, including the Public Hearing. A reasonable person can state that the five months of massaging the application prior to approval was not a reasonable period of time. Due to these facts, we ask the Appeals Board deny and overturn this approval. If the applicant is unable to submit a completed application himself,

then the Planning Board should have timely denied the application, but they did not.

Time Line:

**August 18, 2016 – application received by PB. Exhibit L**

**September 15, 2016 – PB sought more information from applicant**

**September 29, 2016 – public hearing (note application incomplete)**

**September 29, 2016 – PB sought more information from applicant**

**October 20, 2016 – PB sought more information from applicant**

**November 17, 2016 – PB sought more information from applicant**

**December 15, 2016 – PB sought more information from applicant and deemed application complete**

**January 12, 2017 – application approved**

**- The approval of this permit was based on misinterpretation of the ordinance**

1. Town of South Thomaston Land Use Ordinance page 7 number 2 Additional Conditions. "The Planning Board may, in order to carry out the purposes of the Special Exception procedure, require additional conditions, specifications, criteria, and standards necessary to protect public interest and to fit harmoniously and compatibly into their neighborhoods and locations."

Section (d) ... that the proposed onsite use shall not be of a character as to have significant adverse impact upon the value or quiet possession of the surrounding property. The operation of a gravel pit will certainly hinder the quiet possession of our property. This will be a major problem if the decision of the Planning Board is upheld. This is a taking of our land. Section D of the ordinance states that "upon submission of a complete application including all information requested, "the Board shall grant a permit if but only if the use would be in "conformance with the provisions of Section VI, General Performance Standards of this Ordinance."

Section 6 of the Ordinance "General Performance Standards, Subsection A is as follows: Subsection A Purpose. The Standards contained in this Section are intended to allow various uses to be accommodated without detriment to neighboring uses and properties". The granting of this permit violates each of the aforementioned sections of the ordinance because gravel pit operations, by definition will interfere with and be a detriment to neighboring uses and properties. The proposed use is not in conformance with the neighborhood and not in conformity with the provisions of this ordinance hence, the Planning Board had no authority issue this permit.

It is not the burden of people to prove that gravel pit operation would be detrimental to neighboring uses, rather it is the burden of the applicant to prove that the operations would not be a detriment. The authority of the board to issue a permit arises only after the applicant has met his burden of

proof; no such proof was offered and the permit should not have been issued.

Since the adoption of the ordinance almost 30 years ago, the neighborhood has become exclusively residential. There are no commercial businesses in the immediate vicinity except a very small storage business. Since March 26, 1989, many houses have been constructed in the immediate vicinity. This is now home to many people. These homes represent the largest single investment that we will make in our lifetime and therefore we, abutters, neighbors and aggrieved parties respectfully request that the permit be overturned. The industrial activities, noises, vibrations, pollutants, smoke, crushing truck traffic, loss in real estate values and dangerous highway conditions are not harmonious and compatible with the neighborhood as required in the Ordinance. If this activity would be allowed, there would no longer be a "quiet possession of surrounding properties".

Section 4 C of the Ordinance states "It shall be the duty of the Code Enforcement Officer, to enforce the provisions of This Ordinance". The responsibility for enforcement lies with the COD and with the Board of Selectmen. If there are any problems with violations of the Permit, The Board of Selectmen are responsible to rectify the problem. This seems to put a lot of responsibility on the Selectmen, since some of the factors such as noise, dust, smoke, vibrations, truck traffic should be monitored on a daily basis, to allow lawful operation of permitted activity. The failure to monitor would be a callous disregard of the right and welfare of the neighbors.

Perhaps, the disregard of the factors, standards, responsibilities and duties mandated by the Ordinance could constitute gross negligence. Since so many things could go wrong, we request that if the applicant can proceed that he be required to post and maintain a performance bond as well as an indemnity bond to cover damages that may arise from this activity, such as pollution of the water, adverse health effects, diminished property values etc. The water testing and well digging should be performed by a



professional and in the presence of the COD and all results should be certified and made a public record. The water should be checked regularly.

Section of the Ordinance "General Performance Standards" Subsection A is as follows: Purpose. The standards contained in this Section are intended to allow various uses to be accommodated without detriment to the neighboring uses and properties. This permit is not harmonious and compatible with the neighborhood as required in the Ordinance. If this activity would be allowed, there would no longer be a "quiet possession of surrounding properties".

The assertion that the dust pollution will be kept within the pit boundaries is unattainable and therefore false which is not protecting the public.

The decision and the conditions the Planning Board enacted were everything the applicant asked for and nothing that the aggrieved residents of South Thomaston asked for. Trucks were not limited to 15. Saturday work was not banned. Start time is 7 am not 8 am. We could go on and on, but the Planning Board failed in interpreting the Ordinance to protect its residents.

2. Page 8 – Procedure – "The Secretary of the Board shall maintain a record of all meetings, including a transcript, if any, and exhibits or documents submitted regarding Special Exceptions, which shall be a public record."  
Exhibit M

The minutes of meetings are severely deficient and no minutes or any information was kept for the Public Hearing meeting, obviously due to bias already existing for the Young's, family of the deceased Chairman of the Planning Board. All of this obviously misinterpreting the Ordinance.  
Exhibit M

## - Other

1. The Board did not walk the property to see if it was suitable for a Special Exception. This is plain error. How can a board grant an application when they haven't even seen the land and visually see where the abutter and other buildings are actually located? They stated that they used Google Map to look at the property. This is an abuse of their fiduciary duty to the residents of South Thomaston. One Board member started at the January 12, 2017 meeting that she had not driven down Rt. 131 in years. They did not do their job in representing all South Thomaston residents when considering this application.
2. The Board did not require an assurance or surety bond for the project. If the project fails, blows up or goes bankrupt, the land owner will be liable or any clean-up etc. of the property. He can tear up the property and simply walk away and not be held responsible. The town would be forced to sue the landlord/owner for damages.
3. The Board did not require the application applicant to file a business plan. Mr. Adolphsen said that he is "small potatoes" so he didn't need a business plan. Adolphsen did not define what "small potatoes" means. If you are going to run a business no matter how big or small, you need a business plan and the Planning Board failed to ask for one.
4. The Board decided that they don't have to keep notes or minutes of any public hearing. This is wrong. Planning Board's Skarka stated in a public meeting about the gravel pit that they "do not" keep minutes of a Public Hearing. This is blatantly wrong and not truthful because a June 16, 2016 Public Hearing chaired by Eileen Skarka extensive and detailed notes and minutes were kept of that hearing. Why wasn't this done for the gravel pit Public Hearing? Maybe it again was the bias and conflict of interest, but that will be another point of error. Not keeping minutes of a Public Hearing when clearly it was done previously is irresponsible and an error great

enough to overturn this approval by the Planning Board. See Exhibit XX, the detailed minutes of a public hearing held on June 16, 2016.

5. The applicant sent an e-mail to the Board outside of a Public meeting. This violates the Right to Know Law and is unconstitutional.
6. Jeff Northgraves informed the public at the meeting that it would be unconstitutional for a town to prohibit a gravel pit. Where did that come from and what basis did he use to make that declaration?
7. Jeff Northgraves said in allowing the permit that "the town requires that the dust stop on the property". How does one make airborne dust containing silica, stop at certain point on a property?
8. The board did not consider the Maine DOT Route 131 Corridor Management Plan. This plan reflects how busy and dangerous Route 131 is to the community. What is going to happen when 120 large trucks use the road every week? Exhibit F and Exhibit S
9. There are also two clear conflicts of interest and bias within the Planning Board members and the applicant:
  1. Roger Young was the husband of Jean Young and father of Maxwell Young. Mr. Young was actually the Chair of the Planning Board for over eight (8) years until his passing away on March 26, 2016. He had worked very closely with the current Planning Board members. He last chaired this committee on March 17, 2016. Exhibit O. The Minutes of April 21, 2016 states how great his input was to this board. Exhibit P
  2. Cathy Lawrence, is a current board member. On March 17, 2016, Cathy and her husband Russ Lawrence, owners of Simonton Cove, asked this board for an Exception for splitting a lot they were selling. At the March 17, 2016 meeting the Exception was approved. By April 22, 2016 she was an alternate on the Board of Planning. The question may be; was she given the variance because she was going to be on the Planning

board? Even as it is her own home is in the property tax devalue zone due to the pit and she should have recused herself from any discussion or voting on the gravel pit.

It is a conflict of interest for the family of the former Chair of the Committee to be allowed to hear their request for this Special Exception Application. Mr. Young passes away and less than five months later, the family puts the land in Trust and asks for this variance in front of the Planning Board members that served under Roger Young's chairmanship. The family is asking his beloved board members to rule in their favor because they all worked together for years on the Board. This is a pure conflict and reflects bias.

#### Definition of a Conflict of Interest

***"A term used to describe the situation in which a public official or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of the public or a designated individual, exploits the relationship for personal benefit."***

In certain relationships, individuals or the public place their trust and confidence in someone to act in their best interests. When an individual has the responsibility to represent another person—whether as administrator, attorney, executor, government official, or trustee—a clash between professional obligations and personal interests arises if the individual tries to perform that duty while at the same time trying to achieve personal gain. The appearance of a conflict of interest is present if there is a potential for the personal interest such as support of a colleague's family, to get in the way of a Board members fiduciary duty to the residents of South Thomaston. They should have recused themselves from the hearing and turned it over to another independent Planning Board, or replaced those on the existing Planning Board that had the obvious conflict of interest.

Because the Planning Board failed to address this bias and conflict of interest we request that the Appeals Board reject the approval of the application. The results are void because of the bias and conflict of interest and because it was never even brought up and was only discovered in hours of research as to why the

Planning Board was so impartial to the residents of South Thomaston and overwhelmingly helpful and partial to the applicant and the family. At the very least, some members of the Planning Board should have abstained or disqualified themselves, or been replaced with impartial members. The bottom line is that the Planning Board failed the residents of South Thomaston.

Bias existed clearly by the Planning Board toward the applicant and the Planning Board was not impartial to the residents of South Thomaston. Various court decisions also have established a rule requiring a board member to abstain from the discussion and the vote if that board member is so biased against the applicant or the project that he or she could not make an impartial decision, thereby depriving the applicant of his or her due process right to a fair and objective hearing. *Gashgai v. The Board of Registration In Medicine*, 390 A.2d 1080 (Me. 1978). The Planning Board contained members that were so biased towards their deceased Chairman Roger Young, that they failed to be impartial.

10. Some of our aggrieved Residents of South Thomaston are afflicted with medical challenges and health issues that will be magnified and made worse by the gravel pit operation near their homes. Residents of South Thomaston will suffer health issues and will suffer a direct and personal injury because of the Planning Board decision. See letters to the Board. -EY T

The actual use or enjoyment of property will be adversely affected by the gravel pit. *Anderson v. Swanson*, 534 A.2d 1286 (Me. 1987); *New England Herald Development Group v. Town of Falmouth*, 521 A.2d 693 (Me. 1987); *Leadbetter v. Ferris*, 485 A.2d 225 (Me. 1984); *Lake Environmental Association v. Town of Naples*, 486 A.2d 91 (Me. 1984); *Harrington v. Town of Kennebunk*, 459 A.2d 557 (Me. 1983). Anyone wishing to appeal from a local board's decision to Superior Court under Rule 80B must also be able to show actual participation in the local hearing process. *Jaeger v. Sheehy*, 551 A.2d 841 (Me. 1989). Under 30-A M.R.S.A. § 4353, the municipal officers and the planning board are automatically made "parties" to the appeals board proceedings, so they would not have to meet the test outlined above in order to file an appeal in Superior Court from an appeals board decision. *Crosby v. Town of Belgrade*, 562 A.2d 1228 (Me. 1989).

11. In the informational period of the gravel pit application real estate value studies and opinions were submitted. We were never told that since those facts were from out of state that they would not be considered. It was only at the January 12, 2017 meeting we were told by the Planning Board that the studies had zero value.

Since the Planning Board had obvious bias and was totally biased against the residents of South Thomaston and extremely partial to the applicant, we request the following information to be used:

Jennifer Sturks, Rockland Maine Better Homes and Garden Realtor, states, “*...if the pit was a mile or less in proximity to the development, that will devalue your property.*” Exhibit Q

Doug Erickson, Rockland Maine Masiello Group Commercial Broker states, “*Property values will decrease .....*” Exhibit Q

12. The Public Hearing regarding the gravel pit was conducted on September 29, 2016 just 6 weeks after the initial and incomplete application was received. After the Public Hearing, four more Planning Board meetings were held trying to get details for the application from Aldophsen. The residents of South Thomaston were only given one bite of the apple while Aldophsen was given many bites at the apple. He occupied over five meetings as the Planning Board tried to extract information from him. He was vague and shiftily and gave unspecific answers.

The residents of South Thomaston did not know fully the details of his application until it was deemed complete at the December meeting. Why had a public hearing been held months prior to awareness of the facts? A reasonable person would have held a public hearing after facts were obtained, especially due to the controversy brewing regarding this application. The Planning Board erred in refusing another Public Hearing.

One Planning Board member stated that they did it this way because it is always the way they did it. This old-school type of thinking ignores the residents of South Thomaston. It looks bad, smells bad, and situations like this erode the public trust and faith in government. Because the Public

Hearing was held too early in the process, the approval of the permit must be denied or restarted.

13. Private and public nuisance:

A gravel pit would create a public and private nuisance to the abutters and surrounding land owners. A private nuisance occurs when there has been a loss or use of property without an actual physical invasion. A private nuisance occurs when it interferes with the comfort or health of an occupant, such as dust, noise or excessive light. The increased traffic noise vibrations of the rock shakers and noise from a gravel pit operation is a private nuisance which will occur without a doubt. The gravel pit will also be a public nuisance. The running of the gravel pit will affect the health, safety, welfare and comfort of the public at large. The dust which the gravel pit creates, will contain silica and is unhealthful in any situation but especially to the local property owners who suffer from cancer, lung and breathing problems. The letters received by the Board from the public states that dust/silica is a concern by residents with health problems. The Board did not consider this under The Special Exemption (2) (7) section. The Board did not consider how dangerous the increase in heavy trucking will affect the visibility on Rt. 131. The speed limit is 50 on Rt. 131 where the heavy gravel truck will be pulling into the road at an extremely slow rate of the speed. Many crashes will occur. The vibrations from the use of additional machinery will cause noise and be uncomfortable conditions for residents. Exhibit S

Just because the property was zone R1, does not mean that a gravel pit will not constitute a nuisance. The property owners purchased land before the gravel permit was approved. This is not fair to the residents of South Thomaston who thought they had purchased a quiet, clean and beautiful piece of property to build a house and spend the rest of their lives in. To allow the gravel pit to operate will intentionally, negligently and reckless interferes with the residents us and enjoyment of their land in South Thomaston, Maine

14. Planning Board member Sonja Sleeper stated in a Planning Board meeting that they received all the letters and emails from concerned residents. She held up a stack of letters and e-mail paperwork but did not address any of the concerns raised by those letters. When were these letters and e-mails read by the Planning Board? It was never done at any meeting. Was this done outside the parameters of a Planning Board meeting? How can the Planning Board address residents' concerns if they never read these concerns? The voices of the residents were ignored totally.
15. Attached are two emails sent that did not make it in to the public records. Why did not the Selectmen forward these to the Planning Board? The omission of resident concerns is vital and need to be heard. Did the Selectmen arbitrarily decide not to act as elected representatives of their constituency? The fact that at least these two did not make it to the Planning Board is evidence that something was amiss and the gravel pit decision was pre-determined without any concern for the residents of South Thomaston. Due to these facts, the decision should be overturned immediately. Exhibit R



## **Conclusion**

The aggrieved residents of South Thomaston request that the Planning Board Decision of January 12, 2017 be overturned. We also request that if this matter is to proceed further, it should be heard before a competent, fair and impartial Planning Board of another town, or some other relief that would result in a fair hearing.

# **List of Exhibits**

- A. E-mail from Terri Baines, South Thomaston**
- B. Trust agreements**
- C. Permit of Max**
- D. Final report**
- E. Property Value maps**
- F. DOT approval of driveway**
- G. Tax maps**
- H. DEP**
- I. Land Use Ordinance+ application of Max**
- J. DEP info**
- K. DOT Exception**
- L. Meetings by Planning Board**
- M. Land Use Ordinance**
- N. Public Hearing on Junkyard**
- O. Meeting PB 3-17-16**
- P. Meeting PB 4-21-16**
- Q. Rockland Realtor statements**
- R. Additional emails/letters not entered in public record**
- S. Rt 131 Corridor DOT Study**
- T. Public Records letters of protest**