Town of Milford
Zoning Board of Adjustment
March 15, 2018
Ruthann Ouellette
Motion to Dismiss

Present:	Steven Bonczar, Chair
	J. Plourde, Vice Chair
	Joan Dargie
	Rob Costantino
	Tracy Steel, Alternate
	Robin Lunn, Zoning Administrator
	Laura Dudziak, Board of Selectmen Representative
Absent:	Michael Thornton
	Karin Lagro, Alternate
	Wade Scott Campbell, Alternate
Secretary:	Peg Ouellette

Case #2018-06 and Case # 2018-07 – Ruthann Ouellette Appeals

APPROVED April 19, 2018

Steve Bonczar, Chair, opened the meeting and introduced the Board members. He informed all of the procedures of the Board. Since there was a full agenda, he stated the Board's rules allowed for adjournment at 10 p.m. Any cases not completed or heard would be continued or tabled to the next regularly scheduled meeting - unless an alternate location, date or time was decided upon at the end of this meeting - with no additional notice to applicants or abutters. One regular Board member being absent, it was moved by S. Bonczar to seat Tracy Steel as a voting alternate for this case. All agreed.

S. Bonczar said before hearing the next two cases, there had been a motion to dismiss received from the Town of Milford on Case #2018-06 and Case #2018-07. They would proceed as follows: The Town attorney would present the town's case, followed by response on behalf of Ms. Ouellette. Ms. Ouellette was represented by Suzanne Fournier. After that, they would allow for some rebuttal back and forth. Then the Board would vote on whether to grant the Town's motion to dismiss these cases.
S. Bonczar asked the Town attorney to come forward.
S. Fournier asked the Chair for a copy of her written objection, which she failed to bring with her. Copy was provided.

Biron Bedard, Town Counsel, of Ransmeir & Spelman, came forward, representing the Town of Milford and Board of Selectmen with regard to the motion to dismiss the two appeals brought forth by Ruthann Ouellette. He said Board members had before them a fairly complete motion to dismiss the two cases. The two matters on appeal and issues raised were: 1. Proposed excavation of the gravel and aggregate materials and associated access roadway were not governmental uses, which the appellate was claiming, and the Town said they were governmental uses; and 2. Whether the proposed excavation was a grandfathered use or not. He said as a practical matter, the question of whether or not the gravel pit is grandfathered was a decision made in 1991 when the statute RSA 165-E governing gravel pit excavations in the State of NH required any grandfathered gravel pit to submit information to the Town through the Planning Bd and the Planning Dept. to certify that it was a bona fide grandfathered gravel pit. That process was done by Brox in 1991. The Town of Milford benefited from that grandfather status when it acquired the gravel pit. Because it changed owners, it didn't mean it lost its grandfathered status. Bill Parker, former Community Development Director for the Town of Milford, in an effort to answer these questions on the grandfather status of the gravel pit, went through and put this together in 2013and presented it both to the people who were complaining about the grandfather status re the Brox community land, as well as to the Planning Bd. in a hearing in 2014. The Planning Bd. accepted that.

B. Bedard further stated that attached to the Motion to Dismiss the minutes of that joint meeting of the Planning Bd. and Conservation Commission where that matter was discussed. No appeal was taken in 1991 or in 2014. When this matter was brought back before the Planning Bd a year ago with respect to the Master Plan for that property the issue of grandfathering was raised and, once again, not appealed. In addition, there was litigation brought by certain abutters of the Brox land this fall where they were contesting once again the grandfather issue raised in the court; that was dismissed because it was felt they had gotten fair remedies. His point being that the issue of whether the gravel pit was grandfathered had been decided for twenty plus years; more specifically regarding this particular project and issue, going back almost four years. For those reasons alone, the appeal was untimely because the statute required that appeals of administrative decisions be made within a reasonable time. He suggested, when they cite the cases in the Motion to Dismiss, that four years was too long. The Supreme Court of NH has found that for a long period of time, that two months was too long. To suggest that you get three, four, five months, years, decades to appeal was misleading with respect to the state of the law regarding this matter. From that standpoint, the question of whether this gravel pit was properly grandfathered was decided long ago and should have been appealed long ago if you were aggrieved by it and not brought before the ZBA this evening, months, years after it occurred. With respect to governmental use, this would apply from the standpoint that there had been an access road out there for many years. Through some neglect it has become somewhat overgrown. It was planned to be used as the excavation operation resumes this spring, so there has been some clearing done there. That existing access road didn't meet the 25 ft. setback requirement from a vernal pool. As a practical matter, the Town of Milford, for its own uses, was not bound by its own zoning ordinances – does not have to comply with setbacks or proper use within the zone. Once the gravel is removed from it the property will be used for cemetery, fire department, public works building, school, recreational field – all governmental uses in the definition in the statute, RSA 674:54 and, as a result are exempt, and that part of the appeal should be dismissed. With those two items out of the way, there was no appeal for the Bd. to hear. Their jurisdiction was statutory; they could only decide what the legislature gave them power to decide. The legislature said they could only consider appeals of administrative decisions that were timely made. Similarly, they can't decide governmental use – whether the town qualifies for it – because those zoning ordinances or applications were deemed exempt by statute with respect to the state legislature when it bestowed power to the Town. For those reasons the Bd. had to dismiss both appeals by Ms. Ouellette. He was willing to answer any questions from the Bd.

B. Bedard also stated, on a procedural matter, that on behalf of the Town he objected to Ms. Fournier representing Ms. Ouellette since she wasn't a member of the Bar or a member of any licensed profession in NH, and she didn't have any power of attorney that he was aware of from Ms. Ouellette. She didn't

have standing to maintain the appeal for Ms. Ouellette. Since Ms. Ouellette wasn't there to prosecute on her own, he objected to Ms. Fournier representing her. He asked if Bd, had any questions.
J. Plourde addressed a question to the Chair. On the last issue, can't someone simply write a letter stating that this person can represent them, or an engineer or anybody else.
S. Bonczar said they had had situations where they do have a letter. He asked R. Lunn if they had a letter on file stating that Ms. Ouellette approved or allowed Ms. Fournier to represent her with regard to this.
R. Costantino said it was in the packet.
S. Bonczar said he understood B. Bedard's objection.. He found it awkward in looking at what was provided, that Ms. Ouellette wasn't representing herself as an abutter who had standing, and someone without standing was representing her. He asked Bd. members for their feelings on this.
R. Costantino felt that if the abutter asked for someone to represent them, as in other cases – even the previous one – that should be okay.
J. Plourde didn't have an issue with that part of it. S. Bonczar asked if any other members did. None.
S. Bonczar asked the Bd. for any questions for B. Bedard. None at this time.
S. Bonczar asked S. Fournier to come forward. He said they were not going to discuss the appeals, but would discuss the objection to the Motion to Dismiss.
S. Fournier introduced herself as Coordinator of Brox Environmental Citizens, representing Ruthann Ouellette, an abutter. Ms. Ouellette was currently at work and had other commitments following that, but if possible she might stop in later. It wasn't that she didn't want to be there.
S. Fournier proceeded to address B. Bedard's points in the order he made them. Regarding it not being a government use, the application detailed why this didn't meet the definition of a government use by law. It was that future uses were government uses. All those mentioned by B. Bedard were government uses – schools, cemetery, etc. – but future uses were not because the law said you had to have engineering plans and a schedule. That means it's real. This was in the documentation in the packet. Gravel operation was not a government use. You would not find it in the definition of government. She would like opportunity to explain that more later. B. Bedard mentioned that in 1991- that was true. The Brox Industry Pit existed in 1979 so in 1991 the state said you had to make all gravel pits come up to speed, be recorded and documents. They had to file paperwork, which they did in 1991 and it was grandfathered. One of the ways to lose grandfathered status was to go inactive for two years or more. The Town of Milford doesn't recognize that inactivity, but they were wrong. She referred to a letter the Bd would have received that day, which she also had, from an abutter Bobbi (Roberta) Schelberg (186 Whitten Rd).
B. Bedard said he didn't see any letter.
S. Fournier asked if the ZBA received it. It was sent to L. Daley.
S. Bonczar asked which letter.
R. Lunn said it was in the file.
S. Fournier wanted to confirm that it was in the file. S Bonczar said he didn't know which specific letter she was referring to.
S. Fournier said she would present it. She only had one copy. It was from an abutter who was one of numerous abutters who told their own story about the pit being inactive. (letter was found in the file and copy made for B. Bedard).
After B. Bedard had an opportunity to look at Ms. Schelberg's letter, S. Fournier read from the letter in which Ms. Schelberg said that George Brox completely moved his operation to Hudson in the fall of 1996. There were no gravel operations from 1997 to 2000 and even when the Town purchased the land in 2000 there was no movement as far as gravel operations. She (Ms. Schelberg) wrote that she thought the Town spent time clearing the fence from the property, making a new road and clearing the road for a new school to be built and they were by several people that the gravel pit would be gone. The only thing they saw on the property was dumping of soil and sand or toting soil and sand out. But there was no "specific" gravel operation, per se. No gravel equipment operating at all in 2000.
S. Fournier said other abutters had told similar stories of the inactivity. They were long term abutters – of twenty or thirty years. She continued, saying another way to lose grandfathered status, re RSA 155-E:5, that you must do reclamation. If anyone has seen the 18 acres, it had never been reclaimed. Mr. Brox

was supposed to reclaim it. She showed an aerial photo, pointing out that 18 acres. She said the Town admitted it hadn't reclaimed it, because when the warrant article was passed for a gravel operation the warrant article asked for reclamation – an admission that it wasn't done before. She thought that the Town didn't want to recognize the inactivity. It was true they resumed activity. They pulled out winter sand. They hadn't been selling. They weren't authorized for 16 years to sell, until just recently. The repercussions of grandfathered status was that the gravel pits can expand without a gravel permit. Here, if you don't have grandfathered status, you need a gravel permit.
J. Plourde asked her to help him understand something that confused him.
S. Bonczar said to wait until she finished her explanation before asking questions.
S. Fournier said re the Parker memo in 2013, this was what she had for presentation should they get to that. It was a very good memo. Now in 2018 she finally understood it. There was confusion. The state has alteration of terrain permits. Used to be called site specific. Alteration of terrain permit, state level. The 2013 memo was all about DES and state permits. Mr. Craig Rennie (NHDES Land Resources Management Program) at the time said because it was an existing pit they were not doing anything else that called for alteration of terrain state permit. She had clarification on that. In 2012 Mr. Rennie who figured in the 2013 memo, wrote her, which she didn't understand at the time. She passed out copies of that letter.
S. Bonczar said she was getting a little off track into the rehearing. He wanted her to address the objection to the Town's Motion to Dismiss. They were not having a rehearing at that point. Cannot do that until they decide whether they want to move forward or not based on the Town attorney presented and what she presented.
S. Fournier said that was what she was trying to do. The 2013 Parker memo didn't stand alone because the 2012 memo that he didn't mention – because it was sent to her from DES – said that if you want to disturb an area 100,000 SF contiguous disturbance or greater, you need an alteration of terrain state permit because you have gone beyond the existing – when the state uses the word "existing" it meant "grandfathered." The word "grandfathered" won't be found in the law; that was just common language. In 2014 there was a planning document that he didn't mention. This follows the Parker memo in 2013. In 2014 document the Town said it needed a gravel permit – in the Town's planning document. The 2013 memo referred to the state alteration of terrain permit. The 2014 planning document referred to the town gravel permit. These documents not mentioned by B. Bedard because she didn't think he was aware of them. Continuing, B. Bedard mentioned court. They did go to court, and the court said to exhaust all administrative avenues, go for other remedies. That was what they understood the judge to say. This is the procedure the judge said to do; she said did you go to Planning Bd, did you go to Zoning Bd. When they requested a Planning Bd. decision they didn't get that; they ended up with two administrative decisions from the Director of Community Development. B. Bedard mentioned the two meetings last year and gave the Bd. the minutes. She said there was no vote; those were informational meetings only. They mentioned the town didn't want to require a gravel permit. She could quote from the 2014 document if they wanted.
S. Bonczar said she could.
S. Fournier read from document titled "Brox Community Land Engineering and Permitting." She said it was an internal town document. August 27, 2014. Also called Attachment 1. On page 2, Permitting Activities, it said "Redevelopment of the Brox Community land will include site disturbances not covered by the 'grandfathered' excavation activities. The project will require at a minimum an alteration of terrain permit (AOT) from DES and a wetlands permit for reestablishment of the access to Perry Road." It also said "The plan prepared for this activity can serve as a basis for the development of applications for these and other required permits." She said the next sentence was key: "If it is determined there are excess earth materials to be removed from the site from areas outside the 'grandfathered' excavation area an earth removal plan and permit shall be required in accordance with the Town of Milford gravel and earth removal requirements, as well as NHRSA 155E." And, "With the consent of the residents the required sand and gravel mining permits will be obtained in anticipation of the sale of the excess earth

materials." In 2014 when this document was done they were talking about the excess materials in the areas which she pointed out on the poster. She continued, re timeliness.
S. Bonczar said that was what he was interested in because that affected a lot at this meeting.
S. Fournier said she and R. Ouellette and Brox Environmental Citizens. inquired of the Director of Community Development about the 2014 planning document saying they needed a gravel permit. She asked for a decision. Through e-mails, he provided what she considered an administrative decision. Administrative decisions could take many forms - e-mail, memo, note. She had one where code enforcer gave Mr. Parker a report and Mr. Parker looked at it and signed it saying he agreed. She stated there was no notification – just a note in a file. It turned out to be an administrative decision that could be appealed, and it was appealed. Re timeliness, L.Daley's administrative decisions were on Jan. 10. They replied Feb. 5, within 30 days. That is the material the Bd. had before them. These issues had not been resolved in the past. It may seem like it, but they hadn't.
S. Bonczar said there was a difference of opinion – why they were there going over this. Otherwise they wouldn't be there and there wouldn't be a Motion to Dismiss.
S. Fournier could understand the raising of the question and could answer it. 2013 wasn't the end all and be all. That memo related to the state permit, not the town. The 2014 memo never had a further decision. That was the one that the town's own document said the town needed a gravel permit and to follow the gravel regulations. In 2018, let's get it resolved. Let them be heard. The position of R. Ouellette and Brox Environmental Citizens was that the town should make its arguments again here. Let the cases be heard on the merits. Re access road, B. Bedard tied it to government use. The property is divided into two sections. The power line cuts through Heron Pond east to west. North was industrial; south was community land. The community land could in future be used for schools, recreation, etc. The intention of the town planners and leaders was to sell the industrial land for industrial and commercial uses, not government uses. Where's the haul road. It is a two-mile road through the community land and the industrial land out to the commercial area – Hendrix, Hitchiner, etc. It is in the industrial land; cannot make argue that is government use. Gravel and gravel trucks are not government use; a private company will be doing this.
For government it has to be the government doing it for a government purpose, for public good.
S Bonczar asked how does the town build a school.
J Dargie reminded S. Bonczar that he said they were not going to stop the presentation to ask questions.
S. Fournier said B. Bedard mentioned future government uses. She said that was not the law. She could show the law that stated you had to have engineering plans and a schedule, like the fire department being built or the emergency facility – those were specific. You don't have to abide by ordinances. This Bd. makes adjustments. If you don't have 15 ft in front, give it the 12. To totally disregard the town ordinances on the government use reason was falling apart.
J. Dargie reminded S Fournier the point was about timeliness.
S. Fournier said B. Bedard said it wasn't timely made, and it was. Jan. 10 was the decision. There had never been a decision on the wetland buffers at Brox. There was a decision in 2013 on the AOT grandfathered status. Never a decision on the second part. April 6 one was on the wetland buffers – never a decision made. How could they disregard a new decision? How could they not let the ZBA review that decision? Hear it, review the evidence and then decide. They do have standing. R. Ouellette may not be there – but she was behind this, as did many other abutters. It was just that her name was on the applications.
S. Bonczar said he would give B. Bedard a chance to address what she said, and then she would have a chance to speak again.
B. Bedard said he didn't hear the question of timeliness addressed by the appellant, which was how did they ignore the 2013 decision which was clearly a decision by the administrative official in town with respect to the question of the grandfathering of this site. No appeal was taken to that point in time. The 2014 document she referred to wasn't done by a town official. It said in the document it was an ad hoc committee, not by anyone in an official capacity like L. Daley or B. Parker at the time, who had power to make administrative decisions. From that standpoint, they still haven't addressed the reasonable time

issue which they need to have in order to have the appeal heard by ZBA. He said the property had not been abandoned. Town records showed that Brox paid tax on removed gravel through 1999.
J. Dargie said she happened to have a copy.
B. Bedard said if that was an issue they were going to deal with this evening, they would have people from DPW testifying as to material removed since the town had owned the property. He said the facts in this case were so far gone. That was part of the reason for the timeliness requirement, so people's memories aren't so faded, like the abutters [who wrote the letters read] may have forgotten what trucks may or may not have gone out there several times during the year. The problem with waiting years to file an appeal was that people don't remember accurately what happened out there. For that reason, this appeal should be dismissed. Regarding governmental use, because S. Fournier mentioned having engineering plans, designs and timetable, in the audience was Chad Branon from Fieldstone Engineering who had been working with the town on this project for years. Chad developed the master plan that showed proposed uses out there; and he proposed the schedule for reclamation of the site, meaning removing the gravel, not re-vegetating, to make the site ready for this type of work and construction so you can put buildings, recreation out there. Currently the site was a fairly uneven morass of different things. He referred to the master plan which was discussed at hearings before the Planning Bd. which showed engineering plans. They had a master plan. From that standpoint, governmental use did exist there. There were hearings in town. For the last one in April 2017, Ms. Ouellette was noticed directly; he had list showing her on list of abutters.
S. Fournier asked for a copy. He gave one to her and a couple of copies for the Bd.
B. Bedard said they clearly got noticed of the hearing and what was to be discussed. Attached was the list of people it was sent to. With that said, unless the Bd. had questions about what S. Fournier raised, he stood by his initial argument in the appeal. Nothing S. Fournier had said changed that.
S. Bonczar gave S. Fournier an opportunity to respond. He said afterward he would give Bd. members an opportunity to ask questions of Ms. Fournier and B. Bedard. He would set some ground rules in order to stay on point with the emotion to dismiss and the associated arguments.
S. Fournier referred to the April 2017 list, which she said was only a list of addresses. It didn't say certified mail. It was just a list of names. Where was documentation on that? She knew some in the audience were abutters and she would like to know if they received notice of the April 4, 2017 meeting with the Planning Bd, and Conservation Commission.
S. Bonczar said he wouldn't open the discussion to the audience.
S. Fournier maintained there were people there. She had been in close contact with the abutters through the Brox Environmental Citizens, and there was no mention at that April 4, 2017 meeting that the abutters were contacted. It was never mentioned; they could check the minutes. She didn't know that they were contacted. The paper was just a notice put on the town board, which she had seen, but never a notice.
S. Bonczar said she could look at all their cases. The lists are attached and notices go out to all the abutters.
S. Fournier said they go certified mail with receipts. Where were the receipts?
B. Bedard said he wasn't representing they were sent by certified mail. He said he could say they were sent by First Class mail. He had an e-mail from the person saying they were sent out according to the list.
S. Fournier wanted to rebut B. Bedard on timeliness. She said if he was going to insist that everything turned on the 2013 meeting, then they had to look at it. It was very difficult to understand then but she understood it now. It was DES talking about alteration of terrain permit at the state level. Did not address the town level gravel permit. At the end, on page 4, Mr. Parker who wrote the memo said that in the future we would have to abide by all the laws. B. Bedard made an allegation about the 2014 document. That was an internal planning document which said you do need a gravel permit. So, in 2013, G. Scaife (former Milford Town Administrator) said you don't need a state alteration terrain permit for the limited removal of sand. In 2014, the town said they needed a gravel permit. If she heard correctly, B. Bedard said that wasn't a legitimate document; that it was some ad hoc committee. She said that document was attached in an e-mail that was sent to the State by the Town and she was copied on it. F. Elkind who was working at the time, subsequently made a comment that they had changed their mind

about it. There was the confusion. In 2014 they said they needed a gravel permit and all regulations needed to be followed. If the town or someone in the town decides to change their mind, this led to confusion, which needed to be settled with a hearing on the merits of the administrative decision. That was an official document from the town; what B. Bedard said was totally false. B. Bedard mentioned it had never been abandoned; that Brox had paid some taxes since 1999. When Brox Industries was in business, there had to be tens of thousands of cubic yards of material pulled out frequently. The 1999 receipts amounted to a total of 1500 cubic yards over five years. The abutters' memories weren't fading. She believed Mr. Brox got through some piles he had and when he sold it he had to record it and pay a tax. That's when he reported it to the town as excavation, but he had already done it. How could he excavate if his equipment wasn't there? Town documents and records on file from Mr. Parker and G. Scaife showed Brox had ceased operations for many years before we bought the property. She didn't bring the packet of those documents. Abutters have said from firsthand experience that Brox Industries had moved out. The receipt for 1500 was for one or two days when he went and got a little bit out; he was an honest man and paid his tax. B. Bedard mentioned that DPW could testify to material being removed. Was he saying that Public Works was removing material? Eventually they did start pulling sand out for town sand. G. Scaife, Town Administrator at the time, said it didn't amount to mining, so they never went for an alteration of terrain permit because they were not excavating according to the law. B. Bedard said the town was trying to make the site ready and refuted her statement there was no engineering plan. There was a conceptual plan – schools, cemetery, ball field, fire house. We can dream. That is all conceptual. The law stated engineering plans and a schedule, not just in the year 2030. The Brox master plan stated that – in 2030 we may need a school or ball fields in 2025. Re the notice, abutters came to the Planning Bd. meeting. It was a meeting, not a hearing. Why would you notice abutters for a meeting that was not a hearing? There were no votes taken and the representative for the town from Fieldstone told everybody, either in the March or April meeting that they weren't there to change anything, just there to talk. Not a hearing.

S. Bonczar said Bd. members could ask questions, but they hadn't decided whether they would grant this Motion to Dismiss. Based on that, he didn't want to get into rehearings. Questions should focus around the main topics in the Motion to Dismiss, those being the timeliness and the issue of government use under RSA 674:54. Keep questions to that, because they hadn't opened the cases re the actual request for appeal.

J. Dargie had started looking into this further, and it was hard to separate the timeliness from the rest. A memo from Brox Industries where they excavated out of there in 1994, 1995, 1996, 1997, 1998 and they showed they paid taxes in 1999. In 1999 she was on the committee that encouraged the town to buy Brox, and their intent always was to get gravel out of Brox. It was in the deliberative session minutes in 2000, in the Voter's Guide for 2000. In her mind, taking and reclaiming, removing the gravel out of Brox for community use, which was what it said in there, was always on the [intent]. Brox had never been for conservation; it had always been industrial and community use. So it always had a governmental use.

S. Bonczar stopped her, because he wanted to ask if there were any questions of B. Bedard and S. Fournier before they closed that part of the discussion. Wanted to make sure they had time to deliberate.

J. Dargie had no questions.

S. Bonczar said to Ms. Fournier that he wanted questions and then the Bd. members would discuss among themselves with the material they had and make a decision.

S. Fournier said she respected J. Dargie's experience in the past. Responding to points that J Dargie made – one of them, that it was always for the gravel.

S. Bonczar started to stop her.

S. Fournier said she wanted to respond to J. Dargie. S. Bonczar allowed.

S. Fournier said there was a newspaper article about $1 million worth of gravel and material.

J. Dargie said she was referring to way before that. S. Fournier was talking about 2016 vote. J. Dargie said she was talking about 1999 and 2000.

S. Fournier said she was talking about 2000 when we bought it, and before that the discussion about the school. She said Bob Courage, DPW Director then, said in the news article there was about $1 million worth and the document said it was already excavated material. Town got a beautiful deal. We got community land, industrial land and conservation, which was all in the write-up for the Town for this warrant article for the Town in 2000. B. Courage explained it to the newspaper, and the report done by three people on a subcommmittee called it already excavated material. So it was ready for the taking for town uses. Sen. Daniels, who is also Selectman Daniels, before the first warrant article in 2014, said he never knew they were talking about gravel operation; it was always going to be for town use. Many people understood it to be that. J. Dargie said we didn't buy it for conservation. There were three prongs – industrial, bank land, community uses and for conservation. Conservation not just one place; it is a concept covering the entire property.
L. Dudziak commented that it was difficult to understand how this was related.
S. Bonczar agreed; wanted to bring it back to the issue.
J. Dargie said timeliness being that everybody had known all along.
S. Fournier said people had not always knows what was being said.
S. Bonczar said he gave both sides a chance. Asked B. Bedard for anything he wanted to add.
B. Bedard wanted to emphasize to the Bd. that Ms. Fournier's own testimony evidenced that there had been a longstanding knowledge that the Town had said this be grandfathered and going back to April 2017 where she said there was no vote taken, there was clearly a decision made which was grandfathered and she and Ms. Ouellette should have been on notice that the clock was ticking; they didn't do anything until 2018. That was a problem for them with respect to timeliness and government use, because they already built a ball field out there in accordance with the Master Plan, which plan had a timeline for all the buildings that were going in there. The Town was doing what it was supposed to under the statutes.
S. Fournier asked to respond. S. Bonczar said one more thing, and then they would proceed to deliberation.
S. Fournier stated that B. Bedard said the clock started ticking going back to the Planning Bd. meeting. No. There was confusion because from 2014 when the town said they needed a gravel permit and afterward with Fieldstone they were behaving as though they didn't. They asked for the administrative decision for clarity. That was purpose of inquiring with L. Daley, who provided clarity. He made a decision. People had a right to appeal an administrative decision so the ZBA could hear it. B. Bedard mentioned the ball fields as part of the plan. They were delayed; they had no money. All these other things cost money.
S. Bonczar said that had nothing to do with why they were there.
J. Dargie said that was still part of the plan.
L. Dudziak said if there was confusion in 2013that was the time to deal with it.
S. Bonczar asked S. Fournier to finish her thoughts.
S. Fournier said L. Dudziak made a point about 2013 and was stuck at 2013. 2014 happened – that document she read. It was the town that was reversing itself from 2014; that was the problem. That was why they needed clarity from L. Daley, which he provided. His decision favored the town's position, not R. Ouellette's. She has a right to appeal so all the information could be heard. Not to hear it would be strange.
S. Bonczar said the question was, without getting into details of the appeal, whether or not the appeal was timely and whether or not they had jurisdiction, given the issues were around government use and whether the town needed come before the ZBA for decisions. For this, the town's motion to dismiss the appeal was what they needed to concentrate on. In his opinion, after listening to both sides, a difference in what was a decision and what was a conveying of information from past decisions. He had the information in the Motion and how it was depicted and questioned whether the e-mails exchanged were a decision. He felt they were conveying information from past decisions, going back in history to 2013, '14 or whenever to what was decided previously. In this case, the e-mail went to Ms. Fournier but Ms. Ouellette was the one appealing. His concerns: 1. Ms. Fournier basing her timer on that e-mail exchange which, in his opinion, wasn't a decision but mainly

J. Dargie said reiterating a decision that was made.
S. Bonczar said reiterating, exactly. He felt they would set a bad precedent if they allow, every time somebody sends any correspondence out and someone wants to challenge it, it had to come before the ZBA because they consider it as a decision and not informational material.
J. Dargie agreed. The Planning Bd. met on August 20, 2013 and L. Daley was just reiterating what B. Parker had done back then.
J. Plourde said, reading through the e-mail correspondence, his understanding was that no new decision was made. It was just reiterating the history of the project and previous decisions made by L. Daley's predecessor. Didn't find that as a new administrative decision.
R. Costantino agreed with J. Plourde.
S.Bonczar said he spent a lot of time looking at this trying to come up with a decision that was the right one. That was what he felt. His concern was that L. Daley's intent was not to make a decision. It wasn't a decision; it was basically stating facts that had already occurred.
J. Dargie said it was difficult, in reviewing everything, to separate the timeliness of the request and getting into the request itself.
S. Bonczar said with regard to the projects on the town property and re RSA 674:54 the town doesn't have to bring projects before the ZBA.
J. Dargie said she kept going over and over that herself. They don't have to.
S. Bonczar agreed. They don't have to abide by the zoning ordinances. They can, if they choose, but they don't need to and don't have to come before the Bd.
J. Dargie said so that was a moot point.
J. .Plourde agreed they don't. The research he found with NH Municipal Association was in line with what S. Bonczar said, that on government property they didn't need to come before ZBA for any kind of variances, approvals, special exceptions, anything like that. There was a little bit of conflicting testimony presented regarding abandoned property and activity there. J. Dargie was on the original Brox property committee and master plans were developed. B. Bedard mentioned there were engineered plans, work had been conducted on the property.
S. Bonczar said they didn't have to get into that at that point.
J. Plourde wanted to make sure they were in agreement it wasn't an abandoned property.
S.Fournier stood and tried to speak. S. Bonczar said they weren't taking any more testimony; they were in deliberation and she would be out of order. They were deliberating. The public portion was closed. They would make a decision shortly. He then said he felt that everybody looked at it and the RSA and interpreted it the best they could. He was sure Ms. Ouellette and Ms. Fournier had a different interpretation.
J. Dargie said also related to the timeliness. Every meeting the ZBA has had, on any decision, they tell people there was a 30-day period for an appeal. Every time. She didn't think they had anything different than a 30-day appeal. It appeared decisions were made on this well more than 30 days ago.
J. Plourde agreed. What J. Dargie was saying was that if they agreed that L. Daley's e-mail correspondence wasn't a decision, the appeals should have taken place a long time ago, not just this year
S. Bonczar asked if it was consensus of Bd. that didn't represent a decision and the timeliness of the appeals were invalid.
R. Costantino thought so.
J. Dargie agreed
J. Plourde agreed.
T. Steel said based on the 30-day appeal period, it didn't seem there was any question it was past 30 days.
J. Dargie said they've known what's been happening with this property for a long time.
S. Bonczar asked if members had anything to add. No.
S. Bonczar asked for a motion to grant the Town's Motion to Dismiss Cases 2018-06 and 2018-07.
J. Dargie so moved.
T. Steel seconded.

Vote on Motion to Dismiss:
J. Dargie - yes
R. Costantino – yes
J. Plourde – yes
T. Steel – yes
S. Bonczar – yes

S. Bonczar stated it was a unanimous decision to grant the Town's Motion to Dismiss Cases 2018-06 and 2018-07

S. Fournier asked if she was in order [to speak]
S. Bonczar said no. They were done and moving on to the next case.
S. Fournier tried to speak.
S. Bonczar said they were done.
S. Fournier said she was going to say it. They had dismissed cases and she requested that the Town return R. Ouellette's money. The cases weren't heard. She was putting on the record the request from the Zoning Administrator to return the money to R. Ouellette.