



**Town of Gorham
MAY 1, 2006
PLANNING BOARD MINUTES**

LOCATION: Gorham High School Auditorium, 41 Morrill Avenue, Gorham, Maine

Members Present:

**SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE, VICE CHAIR
THOMAS FICKETT
THOMAS HUGHES
MICHAEL PARKER
MARK STELMACK
EDWARD ZELMANOW**

Staff Present:

**DEBORAH FOSSUM, Dir. of Planning & Zoning
AARON SHIELDS, Assistant Planner
BARBARA SKINNER, Clerk of the Board**

The Chairwoman called the meeting to order at 7:05 p.m. and read the agenda. The Clerk of the Board called the roll, noting that all members were present.

1. APPROVAL OF THE APRIL 3, 2006, AND APRIL 10, 2006, MINUTES

Douglas Boyce MOVED and Michael Parker SECONDED a motion to approve the minutes of April 3, 2006, as written and distributed. Motion CARRIED, 7 ayes. [7:06 p.m.]

Michael Parker MOVED and Thomas Hughes SECONDED a motion to approve the minutes of April 10, 2006, as written and distributed. Motion CARRIED, 7 ayes. [7:07 p.m.]

**2. REORGANIZATION OF THE BOARD
COMMITTEE APPOINTMENTS**

Ms. Robie explained that this item was postponed at the April 3, 2006 regular meeting in order to allow discussion at the April 10, 2006 workshop meeting, where the following Board members volunteered for the committee assignments listed:

Douglas Boyce MOVED and Edward Zelmanow SECONDED a motion to approve the following committee appointments:

Ordinance Committee:	Susan Robie, Mark Stelmack, Michael Parker
Sign Ordinance Committee:	Susan Robie, Edward Zelmanow, Douglas Boyce
Private Way Committee:	Michael Parker, Thomas Fickett, Thomas Hughes

Motion CARRIED, 7 ayes. [7:08 p.m.]

3. COMMITTEE REPORTS

- A. Private Way Committee**
- B. Ordinance Committee**
- C. Sign Ordinance Committee**

Ms. Robie explained that a new item has been added to the agenda, that of Committee Reports, but inasmuch as the committees have just been formed, there are no reports at this time. She indicated, however, that there will be reports as appropriate in the future.

4. CONSENT AGENDA

**A. SUBDIVISION AMENDMENT – “AUTUMN BROOK” – off AUTUMN BROOK WAY
- by DAVID R. TUKEY**

Request for a lot line change for land transfer. Zoned SR/MH; M96/L1.402&1.003.

**B. STREET ACCEPTANCE REPORT “DEWAYN’S WAY” & “SALLY DRIVE” – off FINN
PARKER ROAD – by JAMES W. & THOMAS P. SHAW**

Request for acceptance of 2 roads in the Cherry Hill Farm Subdivision as offered by James W. & Thomas P. Shaw. Zoned R; Map 55/Lot 10.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to grant approval of the item A on the consent agenda with conditions of approval, distributed and discussed with the applicant prior to the meeting, and a positive recommendation on Item B.

Discussion: Mr. Boyce asked if comments would be solicited from the Board members and the public. Ms. Fossum replied that the purpose of the Consent Agenda is to expedite the approval of items that are administrative in nature, and if anyone on the Board or anyone in the public wishes to have the item discussed, then the item must be taken off the Consent Agenda and discussed separately. Mr. Boyce noted that inquiry had not been made of the public. Ms. Robie asked if anyone from the public wished to comment on either of the two items on the Consent Agenda. There being no comment, a vote was taken on the motion on the floor.

Motion CARRIED, 7 ayes. [7:10 p.m.]

**5. GRAVEL PIT PLAN AMENDMENT – “MIDDLE JAM PIT” – off 50-60 MIDDLE JAM
ROAD – by R.J. GRONDIN & SONS, INC.**

PUBLIC HEARING

Request for approval of a gravel pit expansion with requested buffer reductions on land of Grondin Aggregates, LLC. Zoned SR; M97/L31 & M98/L1, 2, 6.

Ms. Robie announced that an abutter has requested that the application and public hearing be postponed to a later date due to scheduling conflicts which prevent him from being at the meeting. She said that a copy of the request is in the hands of the Planning Board for consideration. Ms. Robie said she would read the abutter’s request, would ask the developer’s representative to respond to the request, and then would poll the Board on the request for postponement before starting the public hearing. On Ms. Robie’s behalf, Mr. Boyce read the abutter’s request as follows:

E-mail correspondence from Tim Ventimiglia and August Ventimiglia to Deborah Fossum and Aaron Shields, dated April 24, 2006:

“Dear Deborah and Aaron:

We have received by mail a notice of a hearing on Grondin’s reapplication for reduction to the buffer along our property at 46 Middle Jam Road. We understand that this is currently on the agenda for a Planning Board Meeting to be held on May 1, at Gorham HS.

Due to schedule conflicts, neither of us can attend this hearing. As this concerns our property we feel that at least one of us should be in attendance. We also understand that other residents on Middle Jam Road who have been actively involved in discussion of this issue with the Planning Board are also not available on this date. We would therefore like to request a postponement of the hearing to a later date.

We would like to add that no substantive conversation on this issue has taken place since we conducted our own informal site walk with Larry Grondin on October 21st, 2005. During the site walk we discussed a great many concerns with Larry many of which were shared by other neighbors as well. We are not aware of anything having been clarified, communicated or otherwise resolved on Grondin's part since that time and therefore see no justification for the Planning Board's reconsideration of an application for buffer reduction along our property at this time.

Sincerely,

Tim Ventimiglia

August Ventimiglia

46 Middle Jam Road

Gorham, Maine

cc: Middle Jam Road Residents"

Mr. Boyce then read the following E-mail correspondence from Tim Ventimiglia to Aaron Shields, copy to Deborah Fossum, dated April 28, 2006:

"Aaron:

Larry called me just today and said that his consultants have just completed materials for the submission. He explained that this is why we have not received anything to review. I do not believe that if Grondin Aggregates is indeed completing a hydrology study and new plans and submitting critical information to the Planning Board one business day before the hearing that it is fair to expect us to review and respond with our concerns. Without any other information I can only state that my concerns are the same as they were in the Fall last year when I last reviewed their application.

The issue of our water source is one of many issues we have raised and I am glad that after so many, many months of discussions and repeated submissions to the Planning Board that Grondin Aggregates has finally acknowledged that this is indeed an important issue. I do not however believe that a buffer limited to the 'origin' of our water source alone is an adequate solution. There is a reason why the 200 ft buffer is meant to run the length of an abutter's plot line. Water and other natural systems are complex. We do not know anything about how ground waters flows on the site or how the overall water table is effected by the depth of their current or potential future excavation. Our water source is a natural spring and we do not know its exact point of origin. You will undoubtedly hear that Larry has graciously offered to drill us a well. This at first seems like a viable contingency plan for the potential failure of our water source, however I have learned that both of our neighbors have drilled wells and their water has high content of sulfur and iron and other undesirable minerals. In other words a drilled well is not an appealing solution for us. Again, the water source issue is only one of many concerns. I will leave it to others to outline these issues.

I do not see any reason why the expansion of this pit should be granted. Everything is telling us that this pit has reached its natural limits by the standards established by environmental law to protect the larger surrounding environment and adjacent landowner's properties. Larry and his father have been gracious neighbors and we have endured more than 35 years of living next to their gravel operations. I do not need to remind you that Grondin Aggregates owns many other pits. There is no economic hardship here. This is only my opinion but it seems that with this next expansion there are simply too many issues and potential impacts at stake to justify the extraction of what really amounts to a small amount of gravel given the scale of their total operation. I believe that they have not and cannot meet all of the exceptional criteria that are required to grant them a reduction of the buffer along our property.

Respectfully,

Tim Ventimiglia

46 Middle Jam Road

Gorham, Maine”

Walter Stinson, Sebago Technics, appeared on behalf of the applicants and informed the Board that August Ventimiglia was, in fact, present in the audience. Mr. Stinson discussed the time line of the project since the December of 2004 pre-application request to the present time, saying that he believes the application is complete and asked that their application be heard tonight. Ms. Robie announced that with the presence of the abutter, the Board would not be polled on the issue of postponement, and the Board concurred.

Mr. Stinson then described the proposal, noting that there was an existing 5-acre pit on the property and they are asking for approval of an expansion of up to 12 acres. He said that an agreement has been negotiated with the abutter to the north, Peter Busque, for a zero lot line setback from his property, excavation will start at the property line and come down at the Town’s required 3:1 slope to the bottom of the pit, and they have proposed a 200 foot setback from the Ventimiglia’s existing spring on their property. He said that water samples have been taken of that spring by a certified hydrogeologist in order to provide a baseline for the quality of that well. Mr. Stinson said that the setback reduction referred to in the Ventimiglia correspondence deals with an area of the property along the abutters’ northeasterly border where the applicants have requested, in accordance with the Town’s ordinance, a setback reduction to 100 feet, and they believe that they have met the 3 criteria that must be demonstrated before such a reduction can be granted. Mr. Stinson summarized the 3 criteria as follows: (1) noise levels can be maintained to certain minimum standards from the operation; (2) there will remain a visual buffer in spite of the reduction in the setback, and (3) that there will be no unreasonable odor or nuisance to the abutting property owner. He said that their responses to those 3 criteria have been submitted with their application. He said that the property is located in the Suburban Residential zone and the ordinance permits gravel extraction as a special exception, so their application also includes responses to the Special Exception Standards which he would be glad to discuss this evening should the Board so desire. Ms. Robie indicated that it would be appropriate for Mr. Stinson to do so.

Mr. Stinson read the first Special Exception Criterion as follows: “The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads.” He said that the applicant has proposed two items to address this requirement: (1) one way travel will continue to be conducted on Middle Jam Road, entering the pit coming in from Windham Center or the North Gorham Road and exiting the pit through Standish to Route 35. In addition, the applicant has commissioned a traffic study by Gorrill-Palmer Associates to look at the traffic implication of the operation; Gorrill Palmer found that it is expected that there will be 11 round-trip trips on that road on an average day, or 11 trucks in and 11 trucks out. Gorrill Palmer did not find that Middle Jam Road had any high accident locations as defined by MDOT. The other item to which the applicant has agreed is to perform approximately \$25,000 worth of roadway improvements on Middle Jam Road within the Town of Gorham, which is in addition to approximately \$25,000 that the applicant has already made to the Middle Jam Road in Standish.

Mr. Stinson read the second Special Exception Criterion as follows: “The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy conditions results.” He said that the services of a certified hydrogeologist have been retained to look at the ground water issue, it has been proposed in the applicant’s plan that there will no excavation within the ground water itself and that a minimum 2-foot separation will be maintained from the bottom of the excavation to the groundwater table. Mr. Stinson said that the groundwater has been located in the vicinity of the Ventimiglia well and the water in that well is approximately 18 feet below the

bottom of the excavation in the proposed expanded pit. Water samples of that well have been obtained to provide a base line datum of the water quality within the well that can be checked as time goes on, and the applicant has agreed to replace the well in the very unlikely event that there is any impact on it. Mr. Stinson said this is an internally drained pit, there will be no sedimentation or water running out of the pit causing erosion or have any surface water runoff that could contaminate a water supply.

Mr. Stinson read the third Special Exception Criterion as follows: "The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants." Mr. Stinson said that this operation will not create smoke or airborne contaminants, but dust at certain times of the year could potentially be an issue, so the operator has agreed to have a water truck available to wet down the haul roads, the major cause of any dust. The operator has also agreed to pave the first 150 feet, plus or minus, into the site so that the operation will not be tracking dust out onto the Middle Jam Road.

Mr. Stinson read the fourth Special Exception Criterion as follows: "The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties." He said that given the nature of the operation, access of light and air will not be restricted and the hours of operation will be as outlined in the land use ordinance with no exceptions to those hours being requested. Insofar as odors and fumes are concerned, this is a typical gravel pit operation and there would be nothing unusual in its operation, and blasting is not expected as part of this project. The chance of fire hazard is no greater than would be expected from any operating industrial activity that has equipment running on the site.

Mr. Stinson read the fifth Special Exception Criterion as follows: "The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use." He said that no waste disposal system is being proposed; there will be a porta-potty, maintained on a regular basis, on site during operation hours for use by the operators and truck drivers on the site.

Mr. Stinson read the sixth Special Exception Criterion as follows: "The proposed use will not result to damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat, and, if located in a shoreland zone, will conserve (a) shoreland vegetation; (b) visual points of access to waters as viewed from public facilities; (c) actual points of access to waters; and (d) natural beauty." Mr. Stinson noted that this project is not in the shoreland zone so provisions (a), (b), (c) and (d) do not apply. Insofar as impact on spawning grounds, fish and aquatic life, this is an internally drained pit and there will be no water or sediment running off the site which could damage those creatures. He said that there will be clearing on the site to operate the pit, which will impact wildlife habitat, but it is not expected that that will have any impact on wildlife as their corridors will still be available.

Mr. Stinson noted that the applicant is in basic agreement with the conditions of approval.

Mr. Boyce asked Mr. Stinson to elaborate on Finding 4 and address the issue of noise. Mr. Stinson said that the Town has noise standards for operating pits, and based on past studies the applicant has done, the noise standards can be met at the property line, and they would be happy to submit noise readings on an actual operating day. In response to a query from Mr. Stelmack, Mr. Stinson said they had submitted a presentation setting forth the reasons they believe meet the 3 requirements for a reduction in the buffer.

Mr. Shields gave the staff comments, saying that operations at the site would be on a daily basis as needed, depending on market conditions, mining approximately 200,000 yards of sand and

gravel, along with crushing of stone during limited times of the year, for an anticipated pit life of approximately 5 years. Operation hours will be 6:00 a.m. to 6:00 p.m. on weekdays, 8:00 a.m. to 2:00 p.m. on Saturdays and no Sunday operations either proposed or permitted. Should rock and stone crushing take place, it will be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Mr. Shields pointed out that the applicant has applied for a permit from Maine Department of Environmental Protection for a variance permit in order to permit mining to within 2 feet above the groundwater table instead of the 5 feet that is regularly required. The pit entrance will stay in its current location with certain modifications and upgrades such as additional paving and grading to prevent stormwater from leaving the pit, as well as a solid locking gate.

Mr. Shields discussed the applicant's request for approval of a buffer reduction from 200 feet to 100 feet in the required buffer between the pit and the Ventimiglia property. This reduction must be approved by the Board with supporting documentation on how the applicant will meet the requirements of the ordinance in order to get the buffer reduction. Mr. Shields said this item was discussed at the last Board meeting, and several members asked the applicant to provide a larger buffer around the wetland areas as well as the Ventimiglia well, which has been provided as an alternative to the previous proposal. The Board must find that the applicant has satisfied or can satisfy the 3 criteria, which the Board should discuss to determine if the applicant has indeed met these requirements. Mr. Shields summarized the 3 criteria as follows: (1) noise generation; (2) satisfactory plan to control dust from the mining operation; and (3) satisfactory plan to visually screen the mining operation from properties adjacent areas proposed for the reduced buffer. The burden is on the applicant to prove to the Board that he has met those requirements in order for the Board to find that the buffer reduction is satisfactory.

Mr. Shields next discussed the groundwater elevation and the applicant's hydrogeological study, with the water table having been refined over the months in this application's history. He said that the study must be submitted in order to permit them to go within 2 feet of the groundwater table instead of the 5 feet required by the ordinance provided they have MDEP approval to do so. He said that the latest groundwater elevation plan has been provided to the Planning Board, and the applicant has installed several more monitoring wells throughout the site in order to establish the groundwater table on a more even level proceeding northerly to southerly.

Mr. Shields that the applicant is proposing to reclaim the pit according to the requirements of the ordinance, with a 3:1 slope and that no more than 5 acres will be open and unreclaimed at any one time. He said that the applicant has agreed to reclaim the inactive westerly pit, and a Condition of Approval has been drafted requiring that this reclamation take place within 6 months of approval. Mr. Shields also encouraged the Board to discuss possible plantings within the reclaimed area, which, while not required by the ordinance, could help address some of the concern regarding loss of habitat and natural beauty in the Special Exception criteria.

Mr. Shields noted that the applicant has been working with the Town Engineer and the Public Works Director on a schedule of improvements to Middle Jam Road, and a condition of approval has been proposed which would require the applicant to make these improvements prior to the completion of the pit. He emphasized that the improvements would be made by the applicant, not by the Town, regardless of what might happen to the cost in the future.

Finally, Mr. Shields advised the Board that gravel pits are a special exception use in the Suburban Residential District, and must meet the criteria for special exception and the Board must make separate findings on each of the exception criteria.

Mr. Parker asked how much is allowed to be imported into the pit under the present conditions of the pit, and said he would like to know if the pit, with the huge pile of stockpile of imported

material, is within the limits of its license. Mr. Shields replied that he does not know what the pit's past approval(s) were, but at this time they must follow the ordinance. Ms. Robie noted that under the Ordinance, 33% of all materials, crushed or otherwise processed on the property, may be brought in from an outside location. Mr. Stinson said that the estimate is 200,000 yards of material within the pit, and one third of that is about 60,000 yards, but he does not believe that figure has been exceeded. In reply to Mr. Fickett, Mr. Stinson said that based on 11 trucks per day for an average 140 day year is 1400 to 1500 truck loads hauling perhaps 12 yards to the trip, which equals about 18,000 to 20,000 yards per year, so using those numbers the life of the pit could be estimated to be another 10 years.

PUBLIC COMMENT PERIOD OPENED:

Steve Carpenter, 25 Middle Jam Road, discussed the 4 accidents which have occurred in front of his home, 2 on the "causeway," and 3 at the intersection in front of the Storer residence and said that while the trucks might only go in one direction on Middle Jam, it is not truly a one-way road because other traffic travels in both directions. He commented about the water quality and the ongoing problem with sediment flow from the pit. Mr. Carpenter said that there does not appear to be any definitive end to the mining at this pit and the abutters would like to see a guarantee that this expansion would result in the end of the pit.

Melissa Storer, resident at the corner of Middle Jam and North Gorham Road, and inquired about the date that the traffic study was done, saying that last summer, 11 trucks in and out was in an hour and a half period, not a total for an entire day. She said that the truck traffic poses unsafe conditions for her children on Middle Jam Road.

August Ventimiglia, 46 Middle Jam Road, read excerpts from an e-mail letter from Irwin Novak, 82 Middle Jam Road, dated May 1, 2006, as follows:

"Mr. Chairman, Members of the Board:

I will begin with the end: there comes a time in the useful course of a gravel pit operation when, on balance, the request of an applicant to continue or expand operations creates nuisances and perpetuates the disruption of the tranquility of a neighborhood; at that time the mining operation should come to an end. This is one of those times.

At the close of the August 15, 2005, public hearing on this matter, town attorney Ms. Burns, suggested (quoting from the minutes): "that a discussion of the special exception criteria at this time will not advance a discussion of the Board's general concerns." Now that you have before you an application for 'a gravel pit expansion with requested buffer reductions' it is very much appropriate that as a board you should address all of the Special Exception criteria when evaluating this application.

Also at the August, 2005 hearing, the following exchange occurred as recorded in the meeting minutes: Mr. Grondin told Ms. Robie that he does not believe that the pit has ever been reviewed for special exception use. Mr. Neily asked Ms. Fossum if the pit has ever been reviewed under special exception criteria; Ms. Fossum replied that it has not, it was registered in 1990, which is a different procedure than that now under consideration, and there is no grandfathering for this pit. She said that the pit registration process was for pits up to 5 acres and pits greater than 5 acres, and no special exception review was required. However, any expansion after that was required to come in for Planning Board approval, and because it is in a suburban residential district, it is also required to be reviewed under special exception."

* * * (Mr. Ventimiglia noted that at this point that Mr. Novak in his letter restates the special exception criteria).

Continuing with Mr. Novak's letter, Mr. Ventimiglia quoted:

“Since there are new board members, I would like to re-stress my concerns of last year:

1. The Board is being asked to approve past buffer violations. This is patently unfair to abutters and to other pit operators who follow the rules.
2. The pit does not appear to be able to meet the special exception standards of the ordinance.
3. The Board must address the impact of continued operation on the groundwater quality, fluctuating levels, and quantity.
4. There should be a traffic study with school bus driver input.
5. There should be studies of the impact on:
 - a. sedimentation on wells and runoff
 - b. the impact on wildlife habitat and aquatic conditions
 - c. the impact of noise and vibration
 - d. the unhealthful conditions produced by dust and diesel fumes.

Mr. Grondin is a pleasant person, has offered to meet with interested parties and listened to their positions, and has participated in site walks. I commend him for that. But in the end, very little of the concerns expressed have made their way into the applicant's materials. In the past, Mr. Grondin has cited financial and contractual deadline issues (as with his Lowe's project) as a reason for his 'bending' of the rules. I want to emphasize that such issues must remain outside the discussion since they are part of a business's usual profit and risk margin. They have nothing to do with the Special Exception ordinance and are not at issue here.

If I may, I would urge you to focus on all of the Special Exception Criteria. It is important to do so in order to avoid eroding public confidence in the system. It is important to do so also to demonstrate the value of the ordinances of our town – ordinances reached with great care and compromise. In the end, I think you will conclude that the applicant does not meet the criteria and therefore the application should be denied. A viable solution must be reached and a definite timetable established for closure and reclamation.

Respectfully submitted,
Irwin Novak”

After reading Mr. Novak's letter, Mr. Ventimiglia expressed his own concerns about the well on their property, saying that all the wells produce different qualities of water and the water table is not predictable. He said that the promise of a new well would have to be of equal or better quality than their current well, and they would not settle for just a dug well as they believe their water is the best on the road and they do not want to give it up. He discussed variances in general, saying that this is a big industry in a residential neighborhood, this variance applies for the maximum under the law, and suggested that this paves the way for the next step, which is the daylighting variance. He said that once the two pits are daylighted, nothing can be done to prevent dust and fumes from sweeping across the neighborhood., and there needs to be a definite end date for this pit.

Jonathan Cooper, 61 Middle Jam Road, directly across the road from the pit, said that insofar as Special Exception criterion #1 is concerned, the reality of the truck traffic is that instead of 11 trucks per day, the average is more like one truck every 3 to 5 minutes from 6:00 a.m. to 6:00 p.m. He also said that the one-way truck traffic is dependent on Standish permitting it to occur in the future. He said that his children can't use the road to walk or ride their bicycles and driving becomes a hazard. Mr. Cooper commented

about the springs along the hill, as does his well, and he would like a baseline study done on his well too. He said that diesel fumes and dust are very unhealthful. He too commented that the pit needs to come to an end.

Lu Bauer, 115 Middle Jam Road, Standish, noted that this application is masking the larger regional issue of daylighting the Busque pit with this one. She commented that she is familiar with operations in the Busque pit and spoke about noise of backup beepers, banging truck gates, vibrations from rock crushing, and the elimination of wildlife corridors. She also questioned the validity of some of the conclusions of the traffic and noise studies.

PUBLIC COMMENT PERIOD ENDED. [8:14 p.m.]

Mr. Parker asked staff if the entire pit or just the expansion of the pit is under Special Exception Criteria review. Ms. Fossum read the response that the Town Attorney had made to a similar question during the August 15, 2005 public hearing, as follows: "Ms. Burns replied that the expansion has to meet the special criteria, and if the expansion does not meet any of those criteria, then the Board must vote against it. In reply to a question from Mr. Parker, Ms. Burns says that the existing pit has the approvals that it needs to have, and if the Board feels that it is not in compliance with the ordinances, that is an enforcement matter as the Board cannot retroactively review something that has in place the approvals that it needs. Ms. Burns said that the Board can determine if the expansion area can independently meet the special exception criteria. She said that the Board is only looking at anything before it that is part of the expansion but not to other parts of the pit that are already covered by the registration process already in existence. Mr. Parker asked if the traffic hazard on the road were not to increase between what has been registered and what is being expanded, then the Board would have to find that there is no danger from truck traffic. Ms. Burns said that if there is not going to be an increase in traffic, then there is no impact from the expansion, so it should not be reviewed. Ms. Burns said that the Board can ask the applicant if new traffic is going to be generated as a result of the expansion, then that new traffic is subject to the criteria in the ordinance. If it is not going to generate new traffic, then it is an existing condition and is not reviewable by the Board." Ms. Fossum reminded the Board that there is a portion of this pit that was never a registered pit.

Mr. Stelmack asked Mr. Stinson how much of the 200 foot buffer of the Ventimiglia property line is impacted by the 100 foot buffer reduction request. Mr. Stinson replied that about 10% of the line is involved. Mr. Stelmack asked why that 10% reduction would make a difference. Mr. Stinson said it would have a difference in terms of quantity of materials and the way the pit would be regraded, and given the topography, the land they would be mining is much higher than the Ventimiglia house, some 27 or 28 feet, with the house 35 to 40 feet below the top of the hill, representing both a vertical and horizontal separation between the house and the excavation. Mr. Stinson said that they would be discontinuing the use of the driveway easterly of the Ventimiglia property line. In response to a query from Mr. Stelmack, Mr. Stinson replied that a replacement for the Ventimiglia well would either be a dug or a drilled well but there is no diagram of any such replacement well. Mr. Stelmack said he would like to see the alternative identified.

Mr. Hughes referred to proposed Condition of Approval #7, which states: "That the applicant shall be responsible for the replacement of the Ventimiglia well if compromised by the mining operations;" and said he wants to see more specificity in that Condition to ensure that it is equal to or better than the existing Ventimiglia well. Mr. Hughes commented about the difference in truck trips between what the abutters have spoken about and the Gorrill Palmer figures, and suggested that someone should actually be counting the trucks. Mr. Stinson said that with the exception of the Loew's job last summer, he does not believe that the traffic in and out of the pit comes even close to what the abutters are talking about. He said that the numbers in the Gorrill Palmer study were based on 16 years of past history in operating that pit and quoted from the report that there are no high accidents sites on the Middle Jam Road.

Larry Grondin came to the podium and told the Board that the numbers given to Gorrill Palmer were an average over 5 years, with some years at zero and some years at 30,000 cubic yards, and over the construction period, excluding those days when the roads were posted and weekend days. Mr. Grondin said that the pile of rocks is well within the imported material limits and is basically the only material hauled into the pit in the 16 years of Grondin's operation. He said they keep track of every truck every day, every week, every month, every year and determined that the past 5 years is representative.

Ms. Robie said that the most stringent criteria under which this application must be evaluated are the Special Exception Criteria, as well as some elements of site plan review. She said that if there is any one Special Exception that is not approved by the Board, the application will not be granted. She polled the Board to determine if they wished to discuss each Special Exception Criterion and then vote on it. Mr. Parker, Mr. Hughes, Mr. Boyce, Mr. Fickett and Mr. Zelmanow all concurred with the suggested procedure.

Ms. Robie explained that she will read each Special Exception Criterion, everyone on the Board will have a chance to comment, and then the Board will vote on each Criterion. If any one of the Criteria fails, the application is denied. However, Ms. Robie said that the application could come back in another form, or the Board can discuss what will have to happen for it to come back.

Ms. Robie read the first Finding as follows:

Finding 1. The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads;

Discussion: Mr. Parker said he believes the proposed use will definitely create a hazard to pedestrian and vehicular traffic. Mr. Hughes said he is unsure of what numbers to look at – either 11 a day or 1 every 3 to 5 minutes – and is does not know if there will be an increase or by how much and perhaps the trucks need to be counted over a reasonable time frame. Mr. Hughes asked if there could be a limit on the number of truck trips. Mr. Stelmack concurred with Mr. Hughes, saying that even the traffic study indicates that it could be greater than 11, but even that is not quantified. Mr. Stelmack said that a traffic count based on agreed-on parameters might be in order. Ms. Robie said that what is needed is a chart showing the number of trips per day as a frequency diagram or a median chart over the past ten days, which she believes would be the only way to determine whether there is an increase in truck traffic that is substantial over the original 5 acre pit that was on the westerly side. She said such a chart will show the peaks reported to by the public and will show what has happened in order to make a legitimate finding. She noted that the burden of proof on the Special Exceptions is on the applicant, and she said that Mr. Hughes's suggestion about a limit on the number of trucks is perfectly acceptable. Mr. Boyce said that it is reasonable to assume that there may be little or no activity some years, and an excessive amount other years, and the applicant would run as many trucks as he considers necessary. Mr. Zelmanow said that the language of the finding makes no mention of "averages" so on those days where there is an excessive number of trucks that is going to create a hazard. Mr. Fickett said if there is one more truck than 11, a hazard would be created. Larry Grondin said the numbers are based on actual data, and there is definitely a difference between "peak" and "average;" limiting the number of trucks would not be competitive, and it is the intention of this application to extend the life of the pit, not the intensity of the pit, or make a 3 year pit into a 6 year pit.

Vote: The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off-site and on-site, serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage, and the visibility afforded to pedestrians and the operators of motor vehicles on such roads. Agree: 0; Disagree: 7

Ms. Fossum indicated that upon advice of the Town Attorney provided earlier, the Board should go through all of the Special Exception Criteria.

Ms. Robie read the second Finding as follows:

Finding 2. The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results.

Discussion: Mr. Stelmack said that the major issue is the health of the Ventimiglia well, and while the proposed use could cause water pollution or contamination of a water supply, the applicant has agreed to replace the well should it go back, that agreement should. Mr. Hughes concurred with Mr. Stelmack, especially if the Condition of Approval is tightened up more to be more specific in what they would do. Mr. Boyce concurred with Mr. Hughes and Mr. Stelmack. Mr. Zelmanow asked for confirmation that Mr. Stelmack meant that Finding 2 is met provided that there is a contingency plan in place for the Ventimiglia well. Mr. Stelmack replied that the Finding is met so long as Condition of Approval #7, "That the applicant shall be responsible for the replacement of the Ventimiglia well if compromised by the mining operations;" is in place and better defined. Mr. Zelmanow said he could not agree with that assessment in that the Finding does not say anything about a solution, and having a solution does not excuse the fact that the proposed use may or may not cause water pollution. Mr. Parker commented that he did not see where any contamination of the Ventimiglia well would come from, that there is only the concern that the spring would dry up, and the fact that there is a proposed solution to the spring drying up persuades him that this Finding is valid. Mr. Hughes said the issue is that the Board believes that the proposed use will not cause a problem, which he does believe, but having the Condition of Approval is "just in case" anything happens.

Ms. Robie suggested that this Finding needs to be considered in light of the request for the reduction of the buffer from 200 to 100 feet, noting that the buffer has ready been violated and granting that reduction would rectify that violation. She said she could agree with Finding 2 if the buffer were maintained at 200 feet, saying that under those circumstances the well probably would not dry up nor become contaminated. Mr. Stelmack said that the 3 reduction criteria do not include water pollution and he would not be inclined to bring in the issue of water pollution into the buffer reduction request.

Mr. Zelmanow brought up the issue of the pit depth going below the 5-foot requirement to 2 feet above the water table as a possible source for contamination or contributing to the drying up of the well. Mr. Parker asked about the fluctuation in the water table; Larry Grondin replied that for the last year, since monitoring began, the water table has fluctuated one or two feet, but the water table level probably has been substantially lower during drought years, and last year was probably the peak as it was such a wet year. Mr. Grondin said that the water table level is the seasonal high as stated by the DEP and if the water table comes back up, they would be required to return material taken when it was down. Mr. Shields said that if the applicant needs to change anything, one consideration would be the issue of the 2 feet versus the 5 feet above the water table, and suggested that the Board discuss this issue in detail. Mr. Boyce asked the applicant if the eastern portion of the pit was at the ultimate elevation, a couple of feet above the water table, being proposed for the rest of the pit to be excavated. Mr. Grondin replied that they are "pretty close to it." Mr. Boyce noted that the DEP has a process whereby an applicant can request a waiver or reduction from the 5 feet to the 2 feet, and that is sufficient for him to be comfortable that, so long as there is reasonable data about the seasonal high water table, the applicant is permitted to excavate within 2 feet. Mr. Grondin said that they are only just now applying for the DEP permit because they must have at least one year's data from their monitoring wells. Mr. Grondin replied to Mr. Stelmack that the report from MAI Environmental Services of November 18 will be included with their DEP application, as well as any additional information. Mr. Grondin also explained the monitoring schedule required by DEP.

Vote: The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. Agree: 6; Disagree: 1 (Mr. Zelmanow)

Ms. Robie read Finding #3 as follows:

Finding 3. The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants.

Discussion: Mr. Stelmack said he has not heard any testimony this evening that indicates any “unhealthful” conditions as a result of any on-going activities at this facility for the last 15 years, and perhaps a better description would be “adverse,” so as far as the Finding’s language is concerned, he would say that this Finding is met. Mr. Boyce, noting that the burden of proof is on the applicant, said that if the applicant needed to demonstrate healthful versus unhealthful conditions here, that perhaps would be an unreasonable burden, so he is not looking for any kind of professional air quality analyst to do sampling or getting field data. He said there are fumes and exhaust associated with the vehicles traveling to and from the pit, as well as vehicles working within the pit, but as Mr. Stelmack suggested they are more a nuisance or adverse conditions rather than unhealthful. Mr. Boyce also noted that the applicant has indicated there will be a water truck on site to control dust.

Vote: The proposed use will not create unhealthful conditions because of smoke, dust, or other airborne contaminants. Agree: 7

Ms. Robie read Finding #4 as follows:

Finding 4. The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties.

Discussion: Mr. Fickett said he believes that the phrase “... create nuisances...” is key in consideration of this Finding. He said he believes the operation will create noise, hours of operation starting at 6:00 a.m. may be too early. Mr. Hughes said that the pit is in operation now, and he does not believe it will create any more noise, more vibrations under the current operations, and he said the measurements on this Finding could be taken pretty easily, and perhaps the noise of rock crushing was coming from the pit in Standish. Mr. Fickett asked if any crushing had occurred in the pit over the past 15 years; Mr. Grondin replied that the last time any crushing had been done was about 8 or 10 years ago. Mr. Boyce noted that the word “nuisance” is a tough one to quantify, and said that the standards are not sufficient to protect against nuisance effects of noise, given the amount and intensity of noise that the activities generate. Mr. Boyce said if this pit were to run its course and be closed in two years, that would be one thing; however, if the life of this pit is permitted to be extended 5 or 10 years or longer, that would qualify as a nuisance, but it would be difficult for any gravel pit to pass that standard unless there were quantifiable standards. Mr. Boyce asked Mr. Grondin about the imported material and whether it will require further crushing; Mr. Grondin replied that there are some old tailings, perhaps 1000 to 2000 yards, from screening that might possibly require crushing, and none of the material stockpiled would require any crushing to meet State specs. Mr. Boyce said that information made him more comfortable about the noise issue that might be created. Mr. Parker commented that the “proposed use” is for an extension of the life of the pit, not to extend the intensity of the pit, and if this proposed extension creates any increase of the issues in the Special Exception, that is what the Board should be considering. Ms. Robie commented that noise data has been submitted and said she is concerned that there will be a change. Mr. Stelmack said he agreed with Mr. Parker, and believes that the Board has been considering what he describes as the “delta” between what is now and what will be in the event this application is approved. He said

he believes that this Finding is met. Mr. Shields read a quote from Town Attorney found in the August 15, 2005 minutes: "Ms. Burns replied that the expansion has to meet the special criteria, and if the expansion does not meet any of those criteria, then the Board must vote against it," and the Board must consider only the expansion as it reviews the Special Exception Criteria.

Vote: The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard or unreasonably restrict access of light and air to neighboring properties. Agree: 3 (Hughes, Parker, Stelmack); Disagree: 4 (Fickett, Robie, Zelmanow, Boyce).

Ms. Robie read Finding 5 as follows:

Finding 5. The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use.

Discussion: None.

Vote: The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use. Agree: 7; Disagree: 0

Ms. Robie read Finding 6 as follows:

Finding 6. The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat, and, if located in a shoreland zone, will conserve (a) shoreland vegetation; (b) visual points of access to waters as viewed from public facilities; (c) actual points of access to waters; and (d) natural beauty.

Ms. Robie noted that as this site is not located within a shoreland zone, so the Board need consider only the first portion of the Finding and not the shoreland zone provisions of (a), (b), (c) and (d).

Discussion: Mr. Boyce said that this is one biologist's letter short of the applicant meeting the burden of proof because the applicant has not provided sufficient information to demonstrate what the impact will be. Mr. Hughes said that he does not think the extension of the pit will result in any more damage. Mr. Grondin said they had talked to Inland Fisheries & Wildlife about the project, and their opinion was that there would be no direct adverse effects, but said he would follow up with IF&W. Ms. Robie commented that one thing the expansion will do is clear to zero buffer at the back line, and during the site walk it was clear that there were trails and movement for wildlife through the forested area, so removing that portion there would be an increase in the impact. Mr. Zelmanow agreed, indicating that there is no proof before that there would be not be any damage to the wildlife in the area. Mr. Parker noted that the Finding talks about damage to wildlife *habitat*, which is unequivocal that such damage would occur.

Vote: The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird, or other wildlife habitat... Agree: 1 (Hughes); Disagree: 6 [9:36 p.m.]

Ms. Robie asked if the Board wanted to proceed past 10:00 p.m. It was agreed that whatever was not taken up tonight would be postponed to the next Planning Board meeting on May 15, and there would be no new items on that agenda. Ms. Fossum noted the item at the end of this agenda requesting a workshop would have to be moved up and discussed.

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion that no new items would be heard after 10:00 p.m. Motion CARRIED, 7 ayes. [9:37 p.m.]

Stretch Break to 9:50 p.m.

Ms. Robie said it would be appropriate to give the applicant some informal guidance about the buffer reduction and depth to groundwater elevation, as well as any other points that the applicant needs to be made aware of. The Board concurred.

The first item to be discussed is the request for the buffer reduction along the Ventimiglia property, without any vote being taken. Mr. Boyce said he is comfortable with the request, that the applicant has made modified his proposal to stay away from certain portions of the surface swale, and said that the area in which the requested buffer area is to be reduced would be excavated from the low side, making a large berm between the pit and the Ventimiglia property. Mr. Stelmack agreed that the 3 criteria for the buffer reduction request have been met, noting the significant difference in elevation acting as both a noise deterrent and a visual screening, and dust impact was addressed in the unanimous agreement that Finding 3 is met. Mr. Hughes agreed that the 3 criteria have been met and that he does not have a problem with the buffer reduction, and confirmed with Mr. Stinson that the 100 foot buffer area is only about 10% of the property line. Mr. Parker asked if the reduced buffer area would be reclaimed, saying he was comfortable with the buffer reduction. Mr. Grondin said that there has been no discussion about reclaiming that area, but if it needs to be discussed they will discuss it.

Mr. Boyce reiterated that he is comfortable with the groundwater elevation reduction. Ms. Robie noted that the Board in recent past has felt compelled to read the DEP permits before granting approval, as sometimes they contain information that is different, but she gathered that the approval will be a while in coming.

Ms. Robie said that since this pit is in a Suburban Resident area, she would like the applicant to consider following the advice of the Town's consultant about the reclamation. Mr. Boyce said the professional opinion of a wildlife consultant would be helpful to advise the Board if some additional reclamation plantings would be appropriate for habitat purposes. Mr. Stelmack said that the issue does not appear to have been resolved to the satisfaction of the Town's consultant; he also discussed with Mr. Grondin the proposed slope grading realignment along the northwesterly side of the pit. Mr. Boyce said that the ordinance only requires the applicant to vegetate the reclaimed surfaces on the 3:1 slope, but in consideration of the buffer reduction and other issues, the Board should discuss at the appropriate the merits of additional vegetation. Mr. Grondin said they will look at that when they come back before the Board. Mr. Parker said the Ventimiglia buffer should be vegetated as part of the reclamation plan.

Ms. Robie relayed the Code Enforcement Officer's request to put pins along the buffer line. Mr. Grondin said that was incorporated into their proposal. Ms. Robie also relayed a request from one of the technical consultants that there be a sign with hours of operation posted; Mr. Grondin said that historically they have not done so, but Ms. Robie said it would be considerate as they are in a Suburban Residential district.

Mr. Boyce asked if staff knew what the Standish approvals are for the Windham Properties, LLC pit in connection with the issue of wildlife corridors. Mr. Shields said at this time, staff does not know. Mr. Grondin said he believes that pit is approved to 100 or 150 feet from the property line. Ms. Fossum said staff will check that.

Mr. Stelmack spoke about some recommendations in the Gorrill-Palmer traffic study that the center line be striped in the existing roadway, a "trucks entering" sign be installed at the site entrance, and sharp horizontal and vertical curve advisory signs be posted as appropriate. He said these suggestions should be included in the plans.

In response to Ms. Robie, Ms. Fossum said that Board should vote on the Special Exceptions motion, that the application failed the Special Exception Criteria, and at this point the application has technically

failed. Mr. Shields noted that they can amend the application and return. Mr. Stinson asked if the Board could table the application and give them a chance to address the issues that have come up. In terms of whether to continue or postpone, Ms. Fossum said she believed that a re-notification should be done.

Michael Parker MOVED and Thomas Hughes SECONDED a motion to grant approval of the proposed Special Exception Use for R.J. GRONDIN & SONS Middle Jam Gravel Pit located off Middle Jam Road Zoned Suburban Residential, under the Special Exception standards of Chapter I in the Land Use and Development. Motion FAILED of passage, 0 ayes, 7 nays.
[10:19 p.m.]

**6. SITE PLAN – “VILLAGE MALL SHOPPING CENTER” – 80-108 MAIN STREET – by ABBA INVESTMENT REALTY, LLC, KEVIN P. GAGNON, MEMBER
PUBLIC HEARING**

Request for approval of a master plan for the signage at the Village Mall Shopping Center, 94 Main Street, and Pre-Application discussion of a proposed site plan for an interconnected driveway between lots 102/144 and 102/143 with access to Water Street from the Village Mall Shopping Center. Zoned UC; M102/L144, 146, and 143.

NOT HEARD.

7. FINAL SUBDIVISION PLAN – “COTTON FARM ESTATES” / “COTTON DRIVE” – off FARRINGTON ROAD - by VAN E. HERTEL, JR.

Request for final plan approval of a 14-lot residential subdivision on 27.3 acres. Zoned R; M57/L10.

NOT HEARD.

8. FINAL SUBDIVISION – “DAVIS FARM ESTATES” / “CAMERON DRIVE” & “DYLAN LANE” - by JUSTIN A. AND KELLY L. DEARBORN

Request for final plan approval of a 14-lot residential subdivision on 16.56 acres off Davis Annex Road. Zoned SR, M38/L3.

NOT HEARD.

9. PRE-APPLICATION CONFERENCE: PRIVATE WAY APPLICATION – off 34 ROBIE STREET – by JOCK D. AND SUSAN P. ROBIE

Discussion of a proposal for a private way off Robie Street to serve 1 lot. Zoned UR; M25/L9

NOT HEARD.

10. SCHEDULE NEXT PLANNING BOARD MEETING

The next Planning Board meeting is scheduled for May 15, 2006.

11. ADJOURNMENT

Thomas Fickett MOVED and Michael Parker SECONDED a motion to adjourn.

Discussion: Mr. Stelmack asked if the Board needs to address the motion for approval of the expansion of the pit. The Board discussed the options of tabling or postponing, and Mr. Zelmanow said that as the application has failed, there is nothing to table at this point. Mr. Hughes and Mr. Zelmanow said the applicant would have to re-submit its application.

Motion to adjourn CARRIED, 7 ayes. [10:19 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2006

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**4. A. SUBDIVISION AMENDMENT – “AUTUMN BROOK” – off AUTUMN BROOK WAY -
by DAVID R. TUKEY**

**Approved
Conditions of Approval**

1. That this approval is limited to specific amendments proposed and is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning may approve;
2. All other applicable conditions of approval attached to the original subdivision plan approval shall remain fully in effect; and
3. That these conditions of approval and the Final Plan shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board’s endorsement of the final plan, and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to issuance of any building permits for any of the lots within the subdivision.