



**Town of Gorham
JULY 30, 2007
PLANNING BOARD MINUTES**

LOCATION: Municipal Center Council Chambers
75 South Street, Gorham, Maine

Members Present:

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

Staff Present:

**THOMAS POIRIER, Assistant Planner
BARBARA SKINNER, Clerk of the Board
NATALIE BURNS, ESQ., Town Attorney**

The Chairwoman called the meeting to order at 6:30 and read the Agenda. The Clerk of the Board called the roll, noting that all members were present.

1. APPROVAL OF THE MAY 21 AND MAY 22, 2007, SPECIAL MEETING MINUTES AND THE JULY 9, 2007 MINUTES:

Thomas Hughes MOVED and Edward Zelmanow SECONDED a motion to approve the minutes of the May 21 and May 22, 2007 special minutes as written and distributed. Motion CARRIED, 7 ayes. [6:31 p.m.]

Michael Parker MOVED and Thomas Hughes SECONDED a motion to approve the minutes of July 9, 2007 as written and distributed. Motion CARRIED, 6 ayes (Edward Zelmanow abstaining as not have been present at the July 9, 2007 meeting). [6:33 p.m.]

2. COMMITTEE REPORTS

A. Private Way Subcommittee: No report.

B. Ordinance Subcommittee: No report.

C. Sign Ordinance Subcommittee: Mrs. Robie reported that this subcommittee has gathered feedback from citizens, from the Ordinance Committee of the Town Council, and from a focus group, and has made a series of modifications to the proposed Sign Ordinance. When those modifications are complete, the Ordinance will be presented for approval to be sent to the either the Town Council or the Town Council's Ordinance Committee.

3. CONSENT AGENDA ITEMS – *No Items.*

4. ZONING TEXT AMENDMENTS – CHAPTER II, GENERAL STANDARDS OF PERFORMANCE, MINERAL EXPLORATION, EXCAVATION, AND GRAVEL PITS and NOISE ABATEMENT PUBLIC HEARING

Proposed amendments to the Gorham Land Use and Development Code, Chapter II, General Standards of Performance, Section I. Environmental, Sub section C. Mineral Exploration, Excavation and Gravel Pits, 5) Operational Requirements for New and Existing Pits, and 6) Reclamation, relative to slopes within quarries, noise, and hours of operation, and Sub section 1.H Noise Abatement for all uses and development. The Planning Board will start the Public Hearing on the draft amendments on July 30, 2007

and if necessary will continue the Public Hearing to August 6, 2007. At the close of the Public Hearing, the Board will forward a recommendation to the Town Council and may include as part of that recommendation proposed changes to the draft amendments.

Ms. Robie explained that there are four proposed amendments that have been sent to the Planning Board by the Town Council. Town of Gorham rules require that the Planning Board hold a public hearing on the proposed amendments. Further, the rules require that the Planning Board make a recommendation to the Town Council regarding adoption of the proposed amendments, and the Planning Board is free to make recommendations for modifications as well. However, Ms. Robie said that the Town Council is under no legal obligation to either follow the recommendations of the Planning Board or to adopt any modifications that the Planning Board might recommend. Ms. Robie noted that the request for an amendment to the Land Use Ordinance is the right of every citizen in the Town.

Ms. Robie said that the process to be used by the Planning Board is as follows: tonight the Board will open a public hearing on the adoption of these amendments and hear from the members of the public as they wish to speak. Tomorrow night, July 31, 2007, the Planning Board will meet in workshop and discuss its response and any proposed modifications to the proposed amendments that arise from the public hearing or from experts' responses. She said that the workshop meeting, as are all meetings of the Planning Board, is a public meeting; however, there will be no public comment taken at the workshop. The public hearing will be reopened at the August 6, 2007 meeting of the Planning Board, and hopefully during that meeting the Board will be able to make its recommendations and send them to the Town Council.

Ms. Robie said that tonight's public hearing will follow similar procedures as in other public comment sessions where large numbers of people were expected to speak. During the first hour, the Assistant Town Planner will be asked to describe the proposed amendments, the sponsors of the amendments will be asked if they wish to speak, and the Board will ask questions of two consultants who have been retained by the Town to comment on the Town's interests in this matter; one is a sound engineer and the other is an expert in mineral extraction projects management. Following this question and answer period, the Board may ask questions of the Town Attorney. At the end of the first hour, the hearing will be opened to the public for two hours. Speakers are asked to approach the podium, give their names and addresses, and limit their comments to five minutes. Documentary evidence can be introduced, but tonight's topic is restricted to the subject matter before the Board, i.e., the proposed ordinance amendments. Speakers are asked to be polite and address any questions they have through the Chair.

The Assistant Town Planner described the proposed amendments as follows:

The first change occurs in Chapter II, Section 1, C, 5) a):

Add the language "except that the slopes of a quarry may be steeper, provided that the quarry is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 MRSA 490-Y." Add the language "of any pit, including a quarry..."

The second change occurs in Chapter II, Section 1, C, 5) a) (3):

Add the wording "In the event of a reduced buffer under this subsection, the pit shall not be subject to the noise limits established by subsection 4 of this section or Chapter II, Section H of this Code in the area of the boundary reduced under the terms of this subsection if the abutting property owner agrees that the noise limits will not apply to the shared property line or that the noise limits may exceed the 75-decibel limit by an amount established in writing. Any agreement concerning noise levels shall be included in the reciprocal deeds."

Chapter II, Section 1, C, 5) a) (4)(a):

Delete the language "During the peak activity of 60 minutes in a 24 hour period, noise may not exceed 100 decibels at 600 cps when measured at the source."

Chapter II, Section 1, C, 5), c):

Add the language “Except in a quarry that is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 MRSA 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection,”

Chapter II, Section 1, C, 5) d):

Add the language “Where a mineral extraction operation abuts a lot with an industrial operation that uses product from the mineral extraction operation as part of its manufacturing use, the Planning Board may approve additional hours of operation for the mineral extraction operation so that the hours are consistent with the hours of operation of the abutting industrial use. The extended hours of operation shall be limited to the area of the mineral extraction operation located within one hundred (100) feet of the boundary line of the abutting industrial use lot.”

Chapter II, Section 1, C,6) a):

Add the language “This slope limitation shall not apply to quarries that have been operated under a Notice of Intent pursuant to 38 MRSA 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection.”

Chapter II, Section 1, H. Noise Abatement, 1):

Remove the language “During the peak activity of 60 minutes in a 24 hour period a noise may not exceed 100 decibels at 600 cps when measured at the source.”

Add the language: “This section shall not apply to mineral exploration, excavation or gravel pits that are subject to the provisions of Chapter II, Section 1.C.5.a.3 of this Code.”

Chapter II, Section 1, H. Noise Abatement, 2):

Add the language: “A use shall not be subject to the noise limits established by this section at any property line where the property owner and the abutting property owner have agreed in writing that those noise limits will not apply at their shared property line or that the noise limits may exceed the 75-decibellimit by an amount established in writing. Any such agreement concerning the noise limits at the shared property line shall be set forth in reciprocal deeds between the property owners and shall be recorded in the Cumberland County Registry of Deeds.”

Ms. Robie asked William Hoffman, civil engineer from DeLuca-Hoffman, said that DeLuca-Hoffman, principally through Steve Bushey, assists the Town with its review of generally gravel pits. Ms. Robie asked Mr. Hoffman to explain what is meant by the phrase “under a Notice of Intent to comply filed with the Maine Department of Environmental under the provisions of 38 MRSA Section 490-Y.” Mr. Hoffman replied that the ordinance changes involve materials to be extracted if steeper slopes are appropriate and safe. Most ordinances are written for certain slopes to prevent cave ins. The safety of those slopes would be reviewed by DEP in accordance with their standards. Similarly, the ordinance is designed to protect adjacent properties, and changing the noise measurement to the property boundary is appropriate. He said that the case exists that this land use can abut an industrial use and the buffer could be reduced as well as the requisite noise levels, which would be accomplished through deeded covenants. That deeded covenant goes with the land and becomes an agreement in perpetuity or perhaps until the operations of the quarry cease.

Ms. Robie asked if every gravel pit or quarry needs to file a Notice of Intent. Mr. Hoffman said if a certain size threshold is exceeded, the DEP permit is required, but under certain thresholds the DEP permit is not required. Mr. Fickett asked if DEP distinguishes between a gravel pit and a quarry; Mr. Hoffman replied that the review is separate, and said he believes that there are separate sections dealing with both gravel pits and quarries. Ms. Burns confirmed that there are in fact separate statutory sections, so the reference in the proposed ordinance amendment is to the quarry provisions, and it is quarries over a certain size which are regulated under that provision of State law.

Mr. Stelmack asked if under Section 1, C, 5, c) the Town would be relinquishing review of the project to the DEP. Mr. Hoffman said that DEP would have good expertise, and believes that this would be a reasonable change to the ordinance.

In response to a question from Mr. Parker, Mr. Hoffman said that what would be a safe slope for a gravel pit would be different than that for a quarry. Mr. Parker noted that the proposed language in C, 5, c) references gravel pits, and there is still no definition of the shape of a quarry or a quarry side wall. Mr. Parker said that there needs to be a definition of what a quarry's shape needs to look like. Ms. Robie said it is specified by the DEP. Mr. Parker said it doesn't appear in the Town's ordinance, even with this change, and said he would like to see that part of the ordinance tailored after the State standards. Mr. Hughes said it appears that standards are set by virtue of using the State's standards. Ms. Burns said the Town would be deferring to the State, but she did not believe that the State establishes one quantified standard, such as Gorham currently has, for what slopes work. She reminded the Board that what is not being proposed for change under the current Mineral Extraction ordinance is the reclamation section, and under that an applicant has to come before the Board to show what the operation is going to look like, and there are standards which relate to exposed slopes, overburdened soil, and grading and restoration. However, there would not be a quantified standard for any particular slope, the Board would have to look at that on a case by case basis for quarries.

Ms. Robie asked the applicant's engineer if he has any comments; Mr. Stinson replied that there is no formal presentation for tonight, but they are available to respond to any specific questions.

Ms. Robie asked Mr. Bodwell to explain what the proposed changes to the noise standard mean. Mr. Bodwell replied that two things are being proposed: one is to allow a noise easement if an abutting property owner agrees that they don't want the limit to apply at their property line and give permission to the abutting landowner to not have to comply with the local noise standard. Mr. Bodwell said that the State does recognize a noise easement under certain circumstances, so that would be consistent. Mr. Bodwell said that the other change involves removing the requirement that sound levels be limited to 100 dBA at the source for peak activity. He said that particular standard could be interpreted several different ways, and what would be the most important aspect would be the sound level as it leaves the property, not necessarily at the source.

Mr. Parker said if sound is to be measured at the property line, there needs to be a complete encirclement, with no uncontrolled window, and therefore there needs to be some sort of closure, and if it has to include the adjacent property, it has to end at the back wall of the property before it gets to the next person's property.

Ms. Robie asked if the noise standards apply to the second property line. Mr. Bodwell explained the State's protected location standard and a property line standard. He said that the protected location includes a house, approved subdivision, school, hospital, recreation area, etc., and these protected limits would be applied. He said that if they had a project that had an easement they would apply the standard at the limit of the boundaries of that easement. He noted that there are protected easements that are not at the property where there are a separate set of limits which apply, depending on zoning, existing sound levels and other criteria such as the presence of sleeping quarters for night time levels.

Ms. Robie asked Ms. Burns if it is implied in these easements that the noise standard has to be met at the next property line. Ms. Burns replied that as the easement is written, the easement is only good to make ineffective the 75 dBA measurement at the shared property line, between the quarry operation and the abutting property. The easement cannot serve to raise the 75 dBA limit anywhere else but that shared property line, so if you go to the other edge of the property, that will still be 75 dBA. She said that as you travel to the outer limits of the property over which the easement is placed, you still have the 75dBA in place, and as Mr. Bodwell has said, if the property is a protected location it may have to be less than 75 dBA at that property line, depending on where the actual protection falls. Ms. Burns, in response to a question from Mr. Hughes, said she assumed the person who owns the property over which the noise is traveling is going to make, as a requirement of that

easement, the operator who is generating the noise to be financially responsible for the improvements that have to be done.

Mr. Bodwell explained that the State uses an hourly sound level, which is a decibel average called an equivalent sound level. It is a type of energy average, which tends to give some of the higher sound levels more weighting, on an logarithmic scale. Mr. Bodwell said that the Gorham standard could be interpreted as a decibel average, or an arithmetic average. Further, he said that the State standards would be more restrictive than the Gorham ordinance. He said that if he were working on this project, by complying with the State the Gorham ordinance would also be complied with. Mr. Bodwell said the Gorham standard is in decibels, not necessarily the A-weighted that the State uses, and the Gorham standard also refers to 600 cycles per second as the only regulated frequency, which is different from the State.

Mr. Boyce noted that from Mr. Bodwell said, it would appear that the changes being considered tonight do not seem to go far enough in amending the current ordinance language to really reflect technical means of measuring or regulating sound. Mr. Bodwell replied that there are differences between Gorham's ordinance and the State's requirements, and it is important to know how this relates to what the State is doing. He explained a chart he had prepared to show some of those differences, such as how the weighting changes over different frequencies. Mr. Bodwell said the most difficult statement to interpret in the Gorham standard should be removed; *i.e.*, the "at the source" issue. Mr. Boyce said if the Code is going to be changed perhaps the Code should be updated as well to reflect some of the technological means of measuring sound.

Mr. Parker read from the State ordinance that "Maine law applies unless there is a Town ordinance that is within 5 decibels of the State standard..." and suggested that Gorham's standard cannot be compared with the State's, and said that this is a reason to update Gorham's standard to be consistent with the Maine standard. Ms. Burns agreed that there are certainly some distinctions between the ordinances even with the proposed amendments, the most significant being the hourly standard and the fact that the measurement is done differently, which are appropriate topics for a workshop discussion.

Ms. Robie asked Mr. Bodwell if he believes that the State guidelines apply instead of Gorham's ordinance. Mr. Bodwell concurred that would be probably be the case, particularly as the State deals with noise sensitive or protected area limits, which generally are lower than the property line limit that Gorham has. He said there are several protected locations around this site, residential properties, and typically it is much more restrictive to meet those limits at those protected locations as opposed to meeting the property line standard. Ms. Robie asked if the State's noise protection guidelines apply in the Town of Gorham, not just this site, as Gorham's ordinance is deficient. Mr. Bodwell agreed that in certain instances they would.

Mr. Hughes asked who does the measuring to assure compliance. Mr. Bodwell replied that the State has a very detailed procedure that is followed. Mr. Hughes asked when this is done, what triggers the measuring; Mr. Bodwell replied that there could be a permit condition requiring the applicant to measure once they begin operating, and complaints could also trigger measuring. Mr. Bodwell said that DEP does respond to complaints. Ms. Burns said that the Notice of Intent to Comply is similar to the Natural Resources Protection Act permit by rule process, and the State can bring an enforcement action if the applicant violates the Notice of Intent to Comply. Mr. Parker asked who enforces what the developer is agreeing to comply with. Ms. Burns replied that in the case of quarries, the proposed amendments will tie the performance standard to the State standard so the Code Enforcement Officer will be able to enforce anything that comes down as part of that. She said the Board will be granting a mineral extraction permit and probably one of the Board's general conditions of approval will be that the applicant will have to comply with all of the requirements of State law if in fact that is the law that applies, as opposed to the local ordinance. She noted that it will be enforceable at the local level so long it is clearly stated in the Board's approval which standard applies.

Mr. Stelmack asked Ms. Burns if the Planning Board has the authority to impose a condition on a gravel pit operation to require a noise monitoring program to be enacted. Ms. Burns said she will provide Mr. Stelmack with an answer to that query.

PUBLIC COMMENT PERIOD OPENED:

John Stuart, 134 Mosher Road, explained that he is a professional recording engineer with a strong background in recording and propagation of sound. He said he is concerned about changing the noise ordinance without a full and complete investigation into currently accepted national procedures and policies. He asked the Board for permission to play a recording; however, Mr. Parker said he would object to having to listen to 75 decibels from a point source in an enclosed space and asked that Mr. Stuart's request be denied.

Michael Parker MOVED and Thomas Hughes SECONDED a motion to prohibit Mr. Stuart's noise demonstration in this room

DISCUSSION: Mr. Boyce asked how the level will be established. Mr. Stuart replied that he a decibel meter with him. Mr. Fickett said he would prefer to be outside.

Motion CARRIED, 6 ayes, 1 nay (Douglas Boyce).

Mr. Stuart agreed that the ordinance should be changed and noted that such states as California and New Jersey have much more stringent sound ordinances, discussing some of the differences in decibel levels. He also expressed his concerns about truck traffic noise.

Rudolph Kaserman, 23 Queen Street, expressed concern about the impact of this project on his well and the water table.

Jim Cupps, 33 Mercier, said that ordinances are to keep good neighbors good neighbors and expressed concern about the impact on the culture and nature of the community should the ordinances be loosened.

Russell Sprague, 184 Libby Avenue, asked the Town attorney is Section 490-Z of the State's standards has any standards for slopes. Ms. Burns said she does not believe there is a specific slope requirement established by that statute, but there is a requirement for a reclamation plan, as there in Gorham's ordinance, that would on a case by case basis, establish the slope requirement. Mr. Sprague then commented that by removing a local standard and deferring it to the State, a company would be permitted to operate under basically no slope standard. Ms. Burns confirmed to Mr. Sprague that any citizen can request a change to the Code. Mr. Sprague said he doesn't understand a process whereby an applicant can request a change to the Code that it cannot otherwise meet. Ms. Robie responded that the Town Council is elected, the Planning Board is appointed. She said the Town Council makes the laws as elected representatives of the citizens, the Planning Board's job is generally to determine whether an application meets the ordinance that is in existence, and when ordinance changes are proposed, the Planning Board holds a public hearing and makes a recommendation. However, Ms. Robie noted that the Planning Board's recommendation is only advisory to the Town Council. Mr. Sprague said that it does not benefit the Town to have ordinances changed to benefit one applicant.

Donna Beane, 317 Gray Road, commented that there is a "trickle down" effect in that the Federal government sets certain guidelines, States can either adhere to those guidelines or make more stringent guidelines, and the Town can do the same. Ms. Burns agreed. Mrs. Beane said she believes that the proposed changes to the noise standard would allow for greater noise levels. She also expressed safety concerns should the slopes cave in and the quarry as an attractive nuisance for children. She suggested that extended hours of operation for the quarry could be possible so long as the noise levels do not exceed those of the industrial operation it is supporting.

Noah Miner, 32 Green Street, questioned the reasons for the proposed changes, saying that it is inappropriate to change part of the Code where there is an application in the works that will directly benefit from those changes. He commented that the asphalt plant/quarry application has brought to light certain deficiencies in

the Code and asked if the Code is so out of date it must be changed to suit applicants. He suggested that perhaps it is time to change both the Comprehensive Plan and Land Use Code to prohibit mineral extraction and heavy industry directly adjacent to residential districts, and make changes to benefit the community and not applicants.

David Babino, 36 Longmeadow, said he is against the project as shortsighted. He disagreed with the Board's decision not to listen to the sound recording offered by an earlier speaker. He said it would be shortsighted to allow any waivers in the asphalt plant/quarry application. If the application is approved, the Board can mandate an independent group can measure the decibel levels. Mr. Babino asked who is responsible for damage occurring during blasting. He said he called the Governor's office to request a County Commission review of the process, and also commented about perceived conflicts of interest. Ms. Robie noted that anyone on the Planning Board who has a financial interest in what is being heard by the Board is obligated to recuse himself.

Melinda Shain, 12 Timber Ridge, said that while the Comprehensive Plan and ordinances may need to be updated, doing it in an ad hoc fashion, even though it has been done that way in the past, doesn't mean that is the way it should be done in the future. Deferring to State standards or any standard that is unclear or well thought out is not the way to do it, changes should be made in a long-term fashion.

Nikki Dalton, 99 Gateway Commons Drive, closest to the proposed project, spoke about noise impact and the reality of how sound travels, such as the impact of sound traveling from Gorham Days.

Karen Russell, 68 Gateway Commons Drive, said that the Planning Board should have given the audience the opportunity to listen to the sound recording proffered by an earlier speaker, that someone living near the proposed quarry/asphalt plant won't have a choice whether to listen to such noise, and that everyone should be permitted to make their point during the public hearing.

Theresa Dolan, 309 Mosher Road, said she hopes the fact that the applicant is requesting changes to the Code is a red flag indicating his inability to meet the standards as they are written. She said that the proposed changes will impact the residents and the Town as a whole, with the well being of all having been neglected, and to change the code now is poor planning. She said the project will turn families away from coming to Gorham to live, lowering the noise standard will allow the applicant to disrupt the residents' quality of life, and referred to quarry accidents in Massachusetts. She said if the applicant cannot meet the ordinance requirements as they currently stand, the proposed project should be shelved. Ms. Dolan called for a moratorium until the Comprehensive Plan is updated.

Michelle Goldman, 23 Clearview Drive, asked for clarification on the matter of noise easements and abutting properties. Ms. Robie explained that the requirement for the noise standard moves to the boundary line of the property with the easement, which basically expands the size of the parcel. Ms. Goldman said she is concerned about the impact of sound on Gateway Commons and blasting impacts.

Jennifer Everett, 184 Libby Avenue, said that by eliminating slope standards Gorham would be relying on State standards, generic standards which apply to every community. By allowing an abutter to waive noise standards impacts what can occur on that property in the future. Changes in the code should not just benefit one specific group or one specific project. The changes to the hours of operation are specific to the quarry/asphalt plant and neglects the needs of the surrounding residential community. The Planning Board should not recommend adoption of any of these changes.

Matt Zidle, 46 Mercier Way, a former resident of Gateway Commons, commented about the traffic noise from Route 25, and said that the earlier speaker's noise example is relevant and should have been permitted. He said he regrets the industrialization of Gorham.

Dan Martin, 110 Gateway Commons Drive, commented that the direction being taken to fix the noise standards of Gorham is the appropriate thing to do for the community and recommends the use of Mr. Bodwell's expertise.

David Homa, Fort Hill Road, speaking on behalf of Michael Hamilton, Clay Road, a Doctor of Political Science at USM who specializes in environmental and natural resource policy, and his professional experience with the Office of Surface Mining, Reclamation and Enforcement at the Department of Interior and Ft. Collins, Colorado. Dr. Hamilton has reviewed the proposed amendments saying that all the proposals are bad ideas, particularly benches, which are attractive to children and pets and which should be back filled to a safe slope that will not erode in a severe storm. Dr. Hamilton also said that benches are not allowed in coal mine reclamation at the national level, and are considered an unsafe practice. Mr. Homa quoted a statement made by Ms. Burns during the April 2, 2007 Planning Board workshop that the noise standard is not only to protect the abutter, it is for the protection of everyone in the area. Mr. Homa said the Comprehensive Plan is out of date, there should be a moratorium until the Plan is updated, and if there are stumbling blocks, the application should be changed, not the ordinances. The rules should not be changed in the middle of the game.

Ricky Ho, 56 Gateway Commons Drive, brought up the issue of conflict of interest, and said that if the ordinances are changed, it will have a significant impact on the people of Gorham today and in the future.

Danny Shaw, Shaw Brothers, said there is only one thing that pertains specifically to the quarry, and the reason to get the ordinance changed is because every quarry in Gorham was approved under the interpretation of the existing ordinance, which has inconsistencies. He said benching is common and acceptable and quarries have not had the same slope requirements that gravel pits do, that 3:1 slopes can't be done in ledge, so the ordinance has to be fixed. He said that noise has never been measured at the point source, and if the current interpretation is continued, it would mean that even a lawn mower in the middle of a ten thousand acre plot could not be started. He said there is no vehicle in the ordinance to permit a waiver for an abutter, an industrial use within an industrial use. Finally, Mr. Shaw said they have asked for the additional hours for 100 feet of the boundary line in order to move the plant further away from the road. Mr. Shaw offered to take anyone present to the asphalt plant in Limerick to listen to and observe the operations of an asphalt plant.

Theresa Dolan, 309 Mosher Road, approached the podium once more and said that because the Town of Gorham has allowed particular activities for a number of years does not mean it is right. She said to amend ordinances to accommodate a particular project is inappropriate, regardless of how it is justified.

Sonja Frey, Solomon Drive, said they are called "portable" asphalt plants because as soon as they have lost favor in the community where they are located they can be broken down and moved to another community.

Emily Peterson, 10 Polliwog Lane, Heartwood, said she is very concerned about the asphalt plant and believes she would want to explore a quarry, which would be dangerous.

Dana Bartlett, 53 Running Springs Road, said that building 200 homes a year is not the answer to the tax question, Gorham needs more industry and commercial uses to support the tax base. He said that Shaw Brothers have been good to the community and they have done well.

Darcy Jordan, 17 Timber Ridge Road, said if an applicant can't meet the ordinances that are in place, the application needs to be re-evaluated.

John Stuart, 143 Mosher Road, returned to the podium to say that his specific concern has to do with truck traffic which is part of the overall noise problem and that trucks travel too quickly now on Mosher Road. He said that the asphalt plant noise is not his primary concern, it is truck noise.

Karen Carlson, 12 Western Avenue, said her concern is if these ordinance changes allow the asphalt plant/quarry project, what would happen to the air quality.

Patty Garson, 8 Paradise Way, off Libby Avenue, expressed concern about impact on the environment and wildlife, and said she does not want this in her back yard. She said she is against changing the ordinances to benefit one applicant.

Stephen Jordan, 17 Timber Ridge Road, expressed his concern about enforcement and the lack of ability to enforce the standards now in place. He said he called the Code Enforcement Officer in the fall to ask what would happen if someone called to complain about noise that appeared loud; the Code Enforcement Officer said he would listen, hear, come down and take it in myself, and if it appears like maybe it is exceeding some standard, then he would call the State. Mr. Jordan said the ordinances need teeth. He said there are reasons for the local standards, and “cherry picking” certain sections that don’t work to modify them is not the answer.

Melissa Dudley, 21 Sebago Lake Road, said she would be sad to see Gorham change and that that this is not the direction in which Gorham should be going.

Kiana Plummer, 185 Fort Hill Road, said the asphalt plant will not be safe for children or anyone.

Joe Herlihy, 20 Belmont Road, recognized the Board’s hard work and the work being done by the applicant to make this an acceptable plan. He spoke about the significant changes happening in the community, and noted that caution is required about what type of businesses Gorham attracts. He asked what is the process involved in updating the Comprehensive Plan. Ms. Burns replied that the State statute requires that the update of a comprehensive plan involve a process quite similar to a zoning amendment, although a longer process. She said it requires a certain amount of analysis of land use economic factors within a municipality, and usually there is a small group to start that process, and ultimately recommendations come before the Planning Board, which holds a public hearing as it does when there are zoning ordinance amendments contemplated. Ms. Burns said there has to be a great deal of public participation in that process and it generally takes a fair amount of time, and then the Planning Board makes a recommendation to the Town Council for any updating or changes to the Plan. Ms. Burns said that ultimately the Town Council initiates the work. Ms. Burns said she will check on how often the State guidelines recommend that it should be done and report back to the Board.

Michael Parker MOVED and Edward Zelmanow SECONDED a motion to continue the public hearing to August 6, 2007. Motion CARRIED, 7 ayes. [9:03 p.m.]

Ms. Robie asked each Planning Board member to summarize the issues they see with the proposed amendments.

Michael Parker said the difference between a quarry and a gravel pit needs to be addressed. He said he heard a fairly consistent assumption that the Code will be loosened for the benefit of the current applicant, and encouraged members of the public to attend the Board’s workshop. He said he sees this as an opportunity to rewrite a portion of the Code that doesn’t speak, and does not agree with the public’s assumption.

Mr. Hughes concurred with Mr. Parker and said he would like to see the calculations for the noise levels ironed out and safety from the standpoint of fencing of the quarry.

Mr. Fickett said that the Code needs to identify a quarry and a gravel pit, there is a need to get a definition of a noise “point source,” a need to know what tools will be used to measure sound and the locations where it is going to be measured. He said that as a quarry will require blasting, there will be certain limitations on its hours of operation, information is needed on the asphalt plant’s hours of operation and if it is going to be limited to a specific time.

Mr. Boyce said that the purpose of the Code is to promote and protect the health and safety of the public, while allowing for reasonable developments to take place, whether they are commercial or residential. He understands that the Code is deficient in adequately addressing certain provisions which the applicant's proposal has brought forward, even though in the past projects have been approved by the Board that have not specifically addressed these deficiencies. He said that for him, noise is the most significant impact that the proposed amendments to the ordinance deal with. Mr. Boyce said his particular concern is to see that in any changes that are made, the Board not only address what is being asked to look at, but to go further than that and try to insure that the ordinance integrates better means of regulating noise, because our current technological measures are not taken into account the way the current code is written. He said protections could be put in that the applicant could meet. He also expressed concerns for safety of slopes.

Mr. Zelmanow commented that the way statutes are written is proactive, it is usually reactive. In this instance, the Board is looking at the Code as a result of one particular application, but that is not to say that the Code didn't need to be looked at anyway, that in hearing from experts, the public and Board members, it is evident that there are problems, misunderstandings and holes in the Code which need to be clean up and tighten the Code. He said that he would like to see noise measurements added and refined more in line with what the State requires based on the current level of technology, and to provide for monitoring and better enforcement. He also said there is a need for defining pits and quarries.

Mr. Stelmack said that noise is also an issue, and this is an opportunity to more the Code more efficient. He said he would not like to rely on State standards but to put teeth in the Code. He said he is looking to put some of the burden of proof on the applicant in the way of a monitoring program whose results could be shared with the public during the operation of the facility, and asked the Town Attorney to provide some information about the Board's ability to require that.

Ms. Robie concurred with the rest of the Board, and added that in listening to the public discourse, she did not find any sentiment at all for deferring to the State, that the citizens who spoke were much more in favor of local control, which was helpful to hear.

It was agreed that Mr. Stuart would play his sound tapes after the meeting adjourned for whoever wished to hear it.

The Board concurred that the workshop on July 31, 2007 be televised.

5. SCHEDULE OPTIONAL MEETING IF NEEDED

The public hearing was continued to August 6, 2007.

6. ADJOURNMENT

Michael Parker MOVED and Edward Zelmanow SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [9:20 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2007

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