



**Town of Gorham**  
**PLANNING BOARD WORKSHOP NOTES**  
**July 31, 2007**

A workshop meeting of the Gorham Planning Board was held on Tuesday, July 31, 2007, at 7:00 p.m. in the Municipal Center Council Chambers, 75 South Street, Gorham, Maine.

In attendance were Susan Robie, Chairperson, Douglas Boyce, Thomas Fickett, Thomas Hughes, Michael Parker, Mark Stelmack, and Edward Zelmanow. Town Planner Deborah Fossum and Assistant Planner Tom Poirier, Town Attorney Natalie Burns and Clerk of the Board Barbara Skinner were also present. Also present were three members of the public and Dan Shaw of Shaw Brothers.

**1. Call to Order**

The Chairwoman called the meeting to order at 7:00 p.m. She stated that Scott Bodwell of Resource Systems Engineering, the Town's sound review engineer, is present to answer questions from the Board and that no public comment will be taken at tonight's meeting. Ms. Robie noted that individuals have the right to ask for amendments to ordinances, and the Planning Board's job is to make sure that applicants meet the Codes.

Ms. Robie suggested that the Board begin its discussions with the proposed change to the noise abatement provision, Chapter II, Section 1, H. Noise Abatement.

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

**Discuss proposed amendments to the Gorham Land Use and Development Code, Chapter II General Standards of Performance, Section I. Environmental, Sub sections 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.**

The Board discussed briefly the summary of the four proposed ordinance amendments as described in an e-mail from an interested citizen David Babino.

Thereafter, Ms. Fossum summarized the major aspects of the proposed ordinance changes as follows. She said that these amendments include changes to the operational requirements for new and existing pits relative to slopes, hours of operation and noise; the pit reclamation requirements; and the noise abatement standards for all activities in Town. Specifically, Ms. Fossum said that the proposed amendments will revise the operational requirements for new and existing pits in the following areas and involve 8 changes:

Under the operational requirements for new and existing pits:

1. The proposed amendments will allow the slopes of a quarry to be steeper than the current limit of 3:1 if the quarry is operating under a Notice of Intent to Comply filed with the Maine DEP under the provisions of 38 MRSA, section 490-Y.
2. The proposed amendments clarify that no excavation is permitted within the buffer strip of any pit including a quarry, except where provided within the code. This is a clarification relating to other changes that comes into play as gravel pits are reviewed during the review process.
3. The proposed amendments reduce the noise limits for new and existing pits when an abutting property owner agrees to a reduced buffer and also 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 such agreements concerning these noise levels shall be included in the reciprocal deeds that are required when the Board approves the buffer reduction.
4. The proposed amendments eliminate the measurement of noise at the source during the peak activity of 60 minutes in a 24-hour period.
5. The proposed amendments retain the existing slope requirements of 3:1 for lawfully grandfathered pits and 2:1 for new pits and expanded gravel pits that exceed 5 acres, with the exception of quarries which are operating under a Notice of Intent to Comply, filed with the Maine DEP.

The proposed change to hours of operation:

1. The Code currently limits hours of operation for all mineral excavation and gravel pit operations to the hours between 6:00 AM and 6:00 PM Monday thru Friday and 8:00 AM to 2:00 PM on Saturday, although the Board may extend those hours to 5:00 PM. The proposed amendments would allow the Planning Board to approve additional hours of operation where that mineral extraction operation abuts an industrial operation that uses product from the mineral extraction operation as part of its manufacturing use. Under the proposed ordinance change, the Board could approve hours that are consistent with the hours of the abutting industrial use, but the extended hours of operation would have to be limited to the area of the mineral extraction operation that is located within 100 feet of the boundary line of the abutting industrial use lot.

The proposed amendments revise the reclamation requirements for in the following area:

1. The current ordinance requires slopes of 3:1 for pit expansions or new pits greater than 5 acres in size. The proposed amendments exclude quarries that are operating under a Notice of Intent pursuant to 38 MRSA 490-Y from having to meet the slope reclamation requirements of the Gorham Land Use and Development Code, and in that instance, the developer is going to have to meet the State standards.

The proposed amendments will revise the noise abatement standards under Chapter II, Section I, H, the noise abatement standards, as follows:

1. The proposed amendments will eliminate the measurement of noise at the source during the peak activity of 60 minutes in a 24-hour period for all activities in Town.

2. The proposed amendments exempt gravel pits from the noise requirements of this section of the Code, which eliminates the requirement that noise be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness as well as the requirement that noise may not exceed during any consecutive 8-hour period an average of 75 decibels at 600 cps measured at any boundary line.
3. The third change, which applies to all development in Gorham, waive the noise limits under 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-decibel limit by an amount established in writing. Any such agreement would have to be set forth in reciprocal deeds between the property owners and recorded at the Cumberland County Registry of Deeds so that it is clear in future conveyances or exchanges of property that there are agreed-upon waivers or exemptions to the noise limits of the Town's ordinances .

Ms. Burns confirmed to Ms. Robie that only where there is an agreement about the noise limits does the exemption mentioned in #3 above apply, and then only at the shared boundary.

Mr. Parker noted a need for a definition and standards for a quarry.

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The Board began its workshop discussion on the proposed noise abatement amendment change:

“Chapter II, Section 1

H. NOISE ABATEMENT

1) Noise is required to be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. Noise may be equal but not exceed during any consecutive 8-hour period an average of 75 decibels at 600 cps measured at any boundary line. ~~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.~~ 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.”

Mr. Zelmanow reminded the Board that there are two places in the statute where noise is mentioned: one is general noise abatement and the other is noise within the reduced setback area. He suggested that the Board first discuss levels of sound and then discuss measurement of those levels.

Mr. Bodwell gave a presentation dealing with the difficulty of interpretation, enforcement and application of the current Code sound requirement. He confirmed to Ms. Robie that currently both the Town and the State use a 75 decibel (dBA) level but measured differently at property lines unless there is a protected area involved. Mr. Bodwell said that changing to an A-weighted 75 dBA measurement as defined by ANSI standards and removing the “600 cps” would be more consistent, and noted that the State uses an hourly measurement.

Mr. Hughes asked if filing a Notice of Intent to Comply with MDEP also means that the applicant will comply with the State's noise requirements. Ms. Robie said that under discussion is the issue of changing the definition of 75decibels (dBA) in the Town's performance standards, the general performance standards, to apply to any project.

Mr. Boyce noted that the Code presently has one paragraph about noise abatement and the proposed change will add a second paragraph, whereas the State's regulations on noise controls run to 16 pages, and therefore the bigger picture needs to be looked at. Ms. Robie agreed, and said she believes that the Board should recommend to the Town Council that the Town Council Ordinance Committee create an adequate modern noise standard for the Town of Gorham. In the meantime, Ms. Robie said that it would be helpful to establish a definition for 75 decibels (dBA).

Mr. Parker noted that a municipality can increase a State noise level by 5 decibels (dBA), and if they go beyond that, their ordinance is invalid and the State treats it as though it is not addressed by the town. Mr. Parker said that when the Board defines its 75 decibels (dBA), the State standards should be adopted and that the State standard cannot be exceeded by more than 5 decibels (dBA).

Ms. Robie said that currently, in any project reviewed by the Board, the State standards are enforced because the Town's ordinance is so deficient. If anyone chose to complain, the State standards would be enforced because they are much stricter. Mr. Bodwell noted that the State standards only apply to projects that are subject to Site Location of Development review.

Mr. Bodwell confirmed to Mr. Boyce that unless there is some other link to the quarry, the asphalt plant is not subject to a Site Location of Development DEP review and the State standards are not applied. Mr. Shaw said that what links the asphalt plant to the DEP is the air license that it needs, and as soon as you have that license, you have to go by all of DEP's criteria, including noise. Mr. Boyce confirmed with Mr. Shaw that the quarry, as being permit by rule under Section 490, is required to comply with DEP noise standards. Mr. Boyce asked counsel to clarify whether the DEP attaches all of its other regulations to the asphalt plant if the air license is required. Ms. Burns said she would check into that and let the Board know. Mr. Boyce said that in some instances if one needs a permit from one regulatory agency, then you are automatically required to comply with any other regulation that they might have.

Mr. Bodwell said that the study that has been done for the project has been done as if that State noise limit will apply to the asphalt plant. He discussed the tones and durations of various sounds and their impact. He said that local ordinances will apply for those types of sounds for which it has a quantifiable standard, so if the Town does not have a standard for a tonal sound, then the State standards will apply. Mr. Bodwell indicated that he has brought some tapes of various sounds that can be calibrated for visual readouts, as well as frequency readouts. The Board agreed to listen to the tapes later in the evening.

Ms. Robie summarized the Board's recommendation on this proposed amendment as follows:

“Noise may be equal to but not exceed an hourly A-weighted equivalent sound level of 75 decibels (dBA) as defined by ANSI standards and as measured at any boundary line.”

Ms. Robie commented that at no time during the public hearing on the previous evening did she hear anyone suggesting the adoption of State control over local control.

Ms. Robie said that the recommendation does not address the suggested noise standard from Councilor Moulton or by others who have come before the Board, and a cover letter to the Town Council should direct their Ordinance Committee to have a group of people, including local experts, develop a technically accurate, modern sound ordinance for the Town of Gorham because it needs to cover so many things that the Board cannot recommend. Mr. Parker said that some reference needs to be made to the fact that under certain circumstances the State ordinance

will supersede that of the Town, and suggested that the Board can recommend that the ordinance be reworked and reviewed against the State standards to determine if any changes are required, and it is in that recommendation that the Board can point out that there are other standards that are not 75 dBA that will be invoked if the site is under DEP Site Location review.

Mr. Boyce noted that Mr. Shaw has indicated that both the quarry and the asphalt are governed by the regulations of the DEP, which are stricter than the Town's, but confirmation needs to be secured that the asphalt plant is governed by those standards. Mr. Bodwell noted that the Town can only increase by 5 decibels (dBA) what the State will allow. Ms. Burns said that the ordinance could say that where the State's noise levels apply, with the appropriate references to the Chapter and Site Location regulations, the Town's noise limit is 5 decibels (dBA) over whatever is established in the State regulations, or the Town standard is what the State standard is without adding pages and pages to the Ordinance. She said if the Board decides to go that route, will that apply just to State-regulated projects or whether it will apply to non State-regulated projects as well. Mr. Boyce noted that those State regulations only apply when a project requires a State Site Location of Development permit. Mr. Boyce asked if the Town is obligated to enforce State regulations for issues such as noise when a project has a State permit, who is the regulatory agency? Ms. Burns said that the enforcing authority normally would be DEP. She noted that there is a provision whereby a municipality can register with the State to become the enforcing authority of the noise standards that are set forth in DEP's regulations; however, that involves adopting an ordinance which has to be reviewed by DEP, DEP must determine that it is at least as stringent as its regulations, and it has to determine that the municipality has the ability at the local level to actually enforce the noise standard. Ms. Burns said that if the Town adopts an ordinance that has the same standards, or if the project has a condition of approval saying that those are the standards, then it is subject to enforcement both by DEP and the Town.

After discussion, the Board was unanimous in recommending that the reference to measurement at the point source should be struck.

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"Chapter II, Section 1

H. NOISE ABATEMENT

2) 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-decibel limit 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."

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Mr. Boyce commented that if the project limit was at a zoning boundary and there was a more restrictive zone next to it where someone agreed to waive the noise limits, that would introduce that higher noise into that zone so the next person's lot would then be impacted as if it too were at the edge of the less restrictive zone. Ms. Robie agreed with Mr. Boyce, noting that an abutter could be subjected to the unanticipated results of such a waiver, and that an industrial area can be artificially expanded by allowing reciprocal agreements between an industrial zone and a more restricted zone. She said she would support this change if it was between industrial parcels. She

said another issue relates to the responsibility property owners have to the workers who come on their properties or who work for them with respect to noise exposure, and said that while people who operate businesses are generally aware of OSHA noise standards, but an average homeowner or someone running a home business would be aware enough of the standards to protect people who come on their property or who work for them.

In response to a query from Mr. Stelmack, Mr. Bodwell said he has not heard of any situation where an easement was issued where it was later found to be ill-advised. Mr. Hughes said he agreed with Ms. Robie that it should be limited to waivers between industrial parcels. Mr. Boyce said that this is a DEP project and would be controlled by those noise standards. Ms. Robie read from the proposed Noise Abatement section as follows: “2) 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-decibel limit by an amount established in writing.” She said that this language means that it can happen in any zone, between any party.

Mr. Bodwell read the waiver language from the DEP standard as follows: under “Exemptions,” paragraph “s”: “Sounds from a regulated development received at a protected location when the generator of the sound has been conveyed a noise easement for that location. This exemption shall only be for the specific noise, land and term covered by the easement.” However, he pointed out that the only easements they recognize are for protected locations, not for their property line of 75 dBA, and therefore is not appropriate in this instance.

Mr. Parker suggested capping how much more can be permitted, such as no more than 5 dBA above the 75 dBA. Mr. Stelmack suggested no more than 10 dBA, and Mr. Bodwell said that 85 dBA is the threshold for the OSHA hearing conservation program. Mr. Bodwell said that in his opinion if the easement is allowed, the parties should work it out so that the exemption shall only be for the easement as opposed to saying what those limits should be, which could be for time, the facility remaining under its current operating status, no changes in ownership, or other things like that. Mr. Bodwell discussed enforcement procedures, and said the noise easement could be provided to the Town with the application. Mr. Zelmanow asked about securing an easement at a later time, which would be a plan amendment.

Mr. Boyce asked if there is anything in the language currently proposed that stipulates that the granting of an easement will in fact move the regulated noise boundary of the applicant’s project to the property line of the property having the easement. Ms. Burns said that the only place that the 75 decibel limit is being “pushed” to a different location is at that shared property line; otherwise, the other property is still subject to the 75 decibel limit as well, so any regulated sound coming from that property cannot exceed 75 decibels. Ms. Burns said that perhaps it is not necessary to put that into the proposed language because the waiver at the shared property line does not do away with the 75 decibel limit for everything. Mr. Boyce said that if the applicant secures an easement and causes an excess at the farther boundary upon which they have an easement, it should still be the applicant’s responsibility and not that of the grantor of the easement, which is not stated in the proposed language. Ms. Burns said that at that point, it is trying to control the agreement between the parties. Mr. Boyce said he is concerned that the applicant could subject a non-involved party farther away to noise exceeding the limit. Ms. Burns said there is always a 75 decibel limit that must be met for all regulated sound at a property line in the absence of one of these agreements. Mr. Boyce said it should be stated that the responsibility should be identified. Mr. Zelmanow said that the generator of the noise is responsible at any boundary line. Ms. Burns said that probably someone who is agreeing to such an easement who wants to make an industrial use of that person’s property is going to require that

as part of that agreement that in fact certain mitigation measures occur at that far property line, and the person who wants the easement be responsible for that, but that the noise ordinance amendment should not say how enforcement is going to occur. Ms. Burns said that the ordinance will establish the standard that the Town will allow.

Ms. Fossum asked Ms. Burns if it is true that the Planning Board, at the time they are approving the applicant's property, is not measuring the impact of the project and will not be involved in any mitigation. Ms. Burns concurred. Mr. Boyce said that it is the Board's duty in approving a project that they should know all the parameters involved and a project is not allowed to be approved that, absent mitigation that is identified and approved, has the potential of creating an impact beyond a property over which an easement is held. Ms. Burns said that if the Board is granting site plan approval or mineral extraction approval, if the Board is looking at property over which an easement has been granted, that in effect becomes part of the site, so the Board's concern would most likely arise in a case where someone has a use on that site, and the applicant will need to show how the two noise sources will work together at that property line where the easement is established to. She said that the Board has every right to do that.

Mr. Parker suggested addition of the phrase to ensure that the 75 dBA limit will not be exceeded at the back boundary of the abutter's property. Ms. Burns said that could easily be added to Subsection H and she will have to find a correct legal description for "back boundary." Mr. Hughes asked if limitation could not be established by a condition of approval.

Mr. Zelmanow asked if such an easement would trigger site plan review for the second lot. Ms. Burns said that it would not be a separate site plan review, but it may have to be included in the site plan review for the use currently in front of the Board, and the Board can ask to be shown that the performance standard is met at the far or back boundary. She said that when necessary the Board can place appropriate conditions such as some type of improvements such as a noise barrier or a berm or whatever is determined to be an appropriate mitigation measure to make sure that that 75 decibel is met at the far boundary. Ms. Robie noted that it is not the far boundary; Ms. Burns agreed, saying it would be any impacted location. Ms. Robie said it is actually three sides.

Mr. Bodwell suggested the language "the noise limit would then apply at the boundary of the parcel covered by the noise easement." Mr. Parker commented that it has to be a boundary not contiguous with the applicant's boundary.

Ms. Robie stated that the Board has agreed that it would like to suggest language to the Town Council that clarifies where the 75 dBA will then apply and language that clarifies that all of this is subject to the review process. Ms. Robie asked if the conditions of zoning would be changed without a zoning map amendment, and said that this needs to be limited to properties within the Industrial zone. In response to a question from Mr. Stelmack, Mr. Bodwell said his experience has dealt with an industrial use seeking an easement of a non-industrial use, and the issue is not at the property line where a 75 dBA would apply, it is generally at a residential protected location where a more stringent limit applies. Mr. Bodwell described the variances and easements available under State regulations.

Ms. Robie asked Board members for their comments about restricting such easements to properties within the Industrial zone. Mr. Stelmack said he is in favor of restricting it to Industrial zones; Mr. Zelmanow, Ms. Robie and Mr. Boyce agreed. Ms. Burns reminded the Board that the 75 dBA limit applies in all zones of the Town. Ms. Robie said that the Board can recommend that the language that clarifies where the 75 dBA applies limit it to Industrial zones

and then make further commentary in a cover memo that this is not particularly protective of residential areas, as the 75 dBA is not particularly protective of residential areas. Mr. Boyce said that the Council may wish to consider rezoning the area to the east of Route 237, opposite the applicant's property.

Ms. Robie read into the record an excerpt from a letter from Town Councilor Shonn Moulton, as follows:

“Noise generated at the excavation site, including noise generated within the reduced setback area may not exceed an average of 35 decibels at 600 cps measured at any residential property boundary line bordering an industrial zone, during any 1 hour period of time and 50 decibels at 600 cps measured at any commercial property boundary line bordering an industrial zone, during any 1 hour period of time, and 75 decibels at 600 cps measured at any industrial property boundary line bordering an industrial zone.”

Mr. Bodwell said that the 600 cycles per second represents only one narrow band of the sound spectrum.

Ms. Robie restated that Board's conclusions as follows: with respect to the easement, adding the language that clarifies 75 dBA at the boundary, specifying how it will be dealt with for project approval, limiting the easements to the Industrial zone, and point out in a cover letter the inadequacy of the provision for protecting residential abutters to Industrial zones.

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*Ten Minute Break to 9:30, at which time  
the Board listened to Mr. Bodwell's tapes*

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Following the break, the Board addressed the following proposed change.

“Chapter II: GENERAL STANDARDS OF PERFORMANCE

SECTION I - ENVIRONMENTAL

C. MINERAL EXPLORATION, EXCAVATION AND GRAVEL PITS

5) Operational Requirements for New and Existing Pits

d) Hours of operation shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday and 8:00 a.m. to 2:00 p.m. Saturday; provided, however, the Planning Board may extend Saturday hours of operation to 5:00 p.m. if it determines that such extended hours will not unreasonably interfere with neighboring residential uses existing at the time of the request. 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.“



Mr. Boyce noted that when this was brought before the Town Council, Mr. Shaw made a presentation to explain why this change was needed in the Ordinance and Mr. Shaw has offered to provide the same explanation to this Board. The Board agreed that Mr. Shaw's presentation would be helpful.

Danny. Shaw, Shaw Brothers, said that this ordinance change is specific to his project because they have heard from the Board and from one of the neighbors that they would like to see the asphalt plant put back from the road. He said that the Town Attorney has made it clear that two separate lots are needed: one for the asphalt plant and one for the quarry, and this ordinance change is so they can go over the line to a stockpile to get material for the asphalt plant. He said that if they pave a road to go all the way up and back of LaChance they trip site law DEP review by going over the 3-acre impervious surface limit. He said they can't count the road as part of the quarry because it would be subject to the quarry hours. He said this will allow them to move the plant out back. Mr. Shaw made the statement that the asphalt plant now has a 250 foot setback.

Mr. Boyce summed up Mr. Shaw's comments as follows: Mr. Shaw has determined that it would be best to move the asphalt plant out behind LaChance's existing operation as opposed to putting it beside that operation as was in the plans which the Board has seen so far. But in doing so and meeting the other Code requirements, he is getting very close to the 3-acre threshold of impervious surface that triggers the DEP Site Location of Development permit, which he does not want to do as it would add a significant amount of time to the schedule of obtaining the DEP permit. Continuing, Mr. Boyce said that within the 3 acres it would appear that Mr. Shaw does not have the space he needs, including stockpiling materials, so he would like to have the stockpiles immediately accessible for use beyond the property line of the asphalt plant.

Ms. Robie questioned Mr. Shaw's statement about the setback size. Ms. Fossum said that the 50 foot zoning minimum setback is encompassed within the 100 foot buffer from a public right-of-way required under the gravel pit ordinance, and one is layered over. Mr. Shaw said in order to move the plant out back, they would require some leniency in order to keep the stockpiles in the gravel pit area, where they are under Permit by Rule requirements and can have 100 acres of impervious. He said that they have created two lots: one industrial lot falling within industrial rules, and the remainder of the parcel falling within the gravel pit rules.

Mr. Parker noted that the Board has not seen the most recent configurations and asked if the hoppers are what Mr. Shaw is referring to. Mr. Shaw replied that the hoppers would remain in the 3 acre parcel, it is the stockpiles to fill the hoppers. Mr. Shaw said that typically an asphalt plant is within the quarry.

Mr. Parker suggested that the Board not make a change tailored to an individual at a time that that individual is applying for a permit. Mr. Stelmack agreed with Mr. Parker and further said that he did not remember hearing any objections to this proposed change at the public hearing the preceding night (July 30, 2007). Mr. Zelmanow said that the Board is already considering the part of the ordinance dealing with mineral exploration, excavation and gravel pits, and as this section is written, it already goes toward the activities of the applicant. He said the Board is not considering a general ordinance and tailoring it to a specific use. Mr. Zelmanow asked why have one use be permitted to operate at different hours than the other function, where they are basically tied together and the only thing separating them is that property line.

Mr. Hughes commented that not all of the operations of the quarry, such as crushing, should be permitted. Mr. Hughes asked if the concession Mr. Shaw is willing to make by moving the plant back worth the change in the ordinance; if it is not, then he puts the plant back where it was. Mr.

Zelmanow noted that there is a precedent for amending an ordinance on behalf of one specific applicant, citing as an example Community Pharmacy.

Mr. Shaw said this would put them into phase 3, into the hill, and the sound aspects of the plant would be drastically mitigated. Mr. Boyce noted that the latest plans provided to the Planning Board showed mitigation in the form of landscaping and buffering along the northerly side from the impacts of the asphalt plant, but no plans, cross sections or mitigating factors have been provided for this most recent scenario of moving the plant to another location, so the Board has to take it on faith that moving it back is better for the residents of Gorham.

Ms. Robie said that when the ordinance is changed, it changes for everybody and there are ramifications that need to be considered. Mr. Stelmack said he did not see how it could apply to any other quarry. Ms. Robie said it could be any industrial operation that required rock or gravel or sand.

Mr. Parker asked why the State chooses to review an industrial site that has more than 3 acres of impervious surface. Ms. Burns replied that it is any development that has more than 3 acres of unvegetated area, no matter what type of development it is, including some residential projects and would require DEP approval. Mr. Parker asked how this review would benefit Gorham. Ms. Burns answered that it is a similar review to the Town's site plan ordinance and many of the same things are looked at, such as stormwater treatment. She said it is an additional layer of review, and if one's perspective is that the more people look at something, the better, then it does serve a purpose. Mr. Boyce noted the various peer reviewers who are looking at this project and said that there is a pretty thorough review of this project at the local level. Ms. Fossum said that on this particular project there is a very comprehensive peer review process in place, and commented to Mr. Parker that if this provision is not adopted, the applicant will have no choice but to go back to the other plan and that doesn't require DEP site law review. Mr. Boyce commented that in either case, the Board has made no findings so there is still a long way to go in determining fulfillment of the performance standards.

Mr. Zelmanow asked if the applicant can apply for a variance to the current statute, the hours of operation. Ms. Fossum said that she knows of no way that a variance can be granted for that. Ms. Burns said that the Town limits variances to dimensional requirements, or apply to the Zoning Board of Appeals of a Planning Board decision that relates to the Shoreland zoning. Ms. Fossum said there is a provision for variances under the gravel pit ordinances, which directly references the Board of Appeals and the procedural requirements of Section 4 of Chapter 1, which would relate to the dimensional standards. Ms. Burns said that the Board of Appeals can grant a variance if the applicant can meet the undue hardship test.

Ms. Robie polled the Board on the proposed change: Mr. Parker said he did not favor the change. Mr. Hughes asked where the request come from to move the plant back. Ms. Robie replied that the Board did not ask. Mr. Shaw said that Mr. Abbott Mosher asked, and moving the plant back seemed to address the Board's comments made in an earlier meeting. Mr. Shaw noted that he would not ask for a variance from the Board of Appeals as proving undue hardship would be too difficult. Mr. Shaw also commented he did not believe any application could be approved using the point source noise measurement.

Ms. Robie continued polling the Board on the proposed change: Mr. Hughes said he favors the ordinance change; Mr. Fickett concurred, saying moving the plant back would probably be one of the better choices. Mr. Boyce concurred, saying there is a potential benefit to having the asphalt plant constructed behind LaChance Brickyard, but it still remains to be shown that that location

can meet the performance standards and making the proposed change is appropriate in this case. Mr. Zelmanow said he has no problem with how it is written, there is still a lot to be shown to the Board before additional hours can be approved, and there is precedent that the Board has amended ordinances for a particular purpose. Mr. Stelmack is in favor as well, agreeing with Mr. Boyce that it would be better for the abutters to have the plant out back.

Ms. Robie commented that she is reluctantly OK with this amendment as she believes the proposed change in location is a better location for the asphalt plant. She said she would prefer to see a few extra words in the ordinance to restrict what is operated within that 100 feet, such as rock and stone crushing or gravel mining. Mr. Zelmanow suggested the addition of the language “notwithstanding the other provisions of this ordinance...” Ms. Robie also spoke of the annoyance issue of the backup beepers on the front-end loaders which will be moving between the stockpiles and the hoppers. Mr. Shaw replied that OSHA regulations control the hot top plant, and OSHA does not permit laser backup warning devices.

Ms. Robie noted that the time was 10:15 and suggested that the workshop be continued to follow the regular Planning Board meeting on August 6, 2007. She suggested that the Board vote to continue indefinitely the public hearing wherein the public could comment on the Board’s recommendations on the ordinance changes because it has not completed its review on the proposed changes. Ms. Burns said that the public hearing notice already provided for the possibility that the public hearing would have to be continued, and that procedurally the item will have to come up again and be postponed.

The workshop adjourned at 10:20 p.m.

Respectfully submitted,

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Barbara C. Skinner, Clerk of the Board  
\_\_\_\_\_, 2007