



**Town of Gorham**  
**PLANNING BOARD WORKSHOP NOTES**  
**August 6, 2007**  
**(CONTINUATION)**

The Planning Board's workshop was continued at 8:35 p.m.. following the conclusion of its regularly scheduled meeting in the Municipal Center Council Chambers.

In attendance were Susan Robie, Chairperson, Douglas Boyce, Thomas Fickett, Thomas Hughes, Michael Parker, and Edward Zelmanow. Board member Mark Stelmack was absent. Town Planner Deborah Fossum and Assistant Planner Tom Poirier, Town Attorney Natalie Burns and Clerk of the Board Barbara Skinner were also present.

**AGENDA ITEM****Agenda Item**

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

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.

Ms. Robie explained that this is a continuation of the Planning Board workshop that began on July 30, 2007, which is a discussion of the proposed amendments to the Land Use ordinance Chapter II, General Standards of Performance, Mineral Exploration, Excavation and Performance. Inasmuch as this is a workshop, there would be no public comments taken.

Ms. Robie indicated that remaining to be discussed by the Board are two sections that specifically exempt quarries from the slope requirements of the Ordinance. They are Section C 5) a) and c) and C 6) a) Reclamation, where there are different requirements for the side slopes of quarries. She asked the Town's Consultant, Steve Bushey, DeLuca-Hoffman, what would be appropriate language to include if the Board were to be more specific than the State standard..

Mr. Bushey noted that the reclamation section of the State's 490Y section is somewhat vague and basically says under Part 13, "Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face." He said that in practice, the use of benching and scaled faces that are 1:1 or steeper, 1:2 or 1:4, are fairly common. He called the Board's attention to a photo of the Dragon cement operation in Thomaston, and pointed out that each bench shown is probably 20 to 25 feet or perhaps even 30 feet in depth. He said that the total Dragon quarry

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depth is over 100 feet, with the Brickyard quarry perhaps being even a bit deeper. He said that the most important issue is the safety for the people working in the facility, that the passage of excavating and hauling equipment is safe. Mr. Bushey also noted that the width of the benches is an important safety measure as rocks fall off the face, and as blasting and excavating work progresses, it will be important to determine how the rock lays in the face and what type of rock faces they will be left with.

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Mr. Bushey said that the Town's ordinance requirement of 3:1 slopes goes along with the natural inclination of a borrow or sand and gravel pit, and is a slope that can be reclaimed and restored to a vegetative condition. He said that with a quarry, it is acceptable to consider something steeper than 3:1 and it doesn't make sense to try to reclaim a 3:1 rock slope. He said that within the Town, at the two quarries in place at the H Pit and the Brandy Brook quarry, active operational areas, the faces are steeper than 3:1.

In response to a question from Mr. Parker about the Dragon cement benches shown in the photo, Mr. Bushey said that when you have benches that might be wider than 10 or 20 feet, an option discussed relative to reclamation is that the benches themselves can be grassed. Mr. Bushey said he has not found any no specific State requirement to protect the upper edges of a quarry or borrow pit from access, the discussion worries mostly about rock falling down. Mr. Bushey confirmed that a 3:1 slope is easier to put back to a vegetated condition so that it does not erode.

Mr. Hughes asked about the type of blasting used in a quarry operation., if the technique is similar to that used in residential development. Danny Shaw, Shaw Brothers, replied that the technique is the same, with holes for delay, providing an almost endless sequence with different delays.

Mr. Bushey said that a reclaimed quarry would not necessarily look like the photo he provided of Dragon Cement's operation. He said he would try to get some information and report back to the Board. He did say that some of the older quarries in Massachusetts have been turned into ponds.

Mr. Parker asked for a vision of what a reclaimed quarry might look like. Mr. Hughes said that there must be some dimensional requirements written down somewhere; Ms. Burns noted that the State's regulations do not go into that level of detail, and seems to be a case by case analysis. Ms. Fossum said that she and the Assistant Planner had spoken to Mark Stebbins at the Maine DEP, and his description of benching is what Mr. Bushey has described, and their concerns involve stability, with no rock fall, and sounds very situational based on what is being quarried. Mr. Hughes said that it would appear no standard can be set until reclamation is about to begin. Mr. Parker said that it appears to him that the two governing points in reclaiming a gravel pit are to vegetate it to prevent erosion, and to keep it shallow enough so it is not a risk to people traversing it. He said that in a quarry, he believes vegetation is of secondary importance, but safety is a greater concern because of the heights involved and the distances of those heights. Mr. Parker said there should be something in the Code to protect the onlooker and the worker from falling rocks and falling people, with safety the predominant guide.

Mr. Boyce asked Mr. Bushey how many quarries he has reviewed over the years; Mr. Bushey replied two in Gorham, one in Standish, and one in Naples. Mr. Bushey said none of those have been exhausted and closed out yet. Mr. Boyce asked if Mr. Bushey has seen any safety devices around a quarry, and, if so, what they might be. Mr. Bushey said only the typical property fencing with signage, more of an operational nature to keep neighbors out, and said that most of these operations are in a setting that is reasonably removed from cross traffic. Mr. Boyce said that he believes the applicant's project could be considered an attractive nuisance, and it would

not be that far removed from “civilization” or recreational passages, and it might be appropriate to have some sort of fencing and signage at the perimeter of the parcel itself or of the facility as it grows to alert people crossing over the property of the inherent danger.

Ms. Robie asked if language should be added to the Ordinance that quarries that are abutted by residential properties need to be fenced. Mr. Boyce replied that in his opinion, such language would appropriately be applied to any such quarry facilities, regardless of where they are located in Gorham. Mr. Parker said he believes that, rather than adding language to the Ordinance, this belongs in a cover letter to the Council, indicating that there is nothing in the Ordinance regarding safety and reclamation depend on many factors.

Mr. Parker asked Mr. Bushey if the Notice of Intent to Comply addressed safety from within and from without. Mr. Bushey said it addresses safety from within, the falling rock issues, but the concern about outsiders having a potential issue of a drop off is not covered well at all. Mr. Parker suggested that the Board’s cover letter state that safety from within is considered part of the State law under which quarries will operate, but that safety from without is not, which is a deficiency in the Ordinance.

Ms. Robie asked what the other Board members thought, do they agree with Mr. Boyce that it should be added to the Ordinance, or with Mr. Parker that it should be addressed in the Board’s cover letter to the Council. Mr. Hughes said he believes it should be in the final ordinance, and asked if any of the operating quarries have a reclamation plan. Ms. Fossum replied that there is a reclamation plan approved in 1998 or 1999 for the Brandy Brook quarry, but the H Pit predates the current gravel pit ordinance. Mr. Hughes said he would like to see the written reclamation plan; Mr. Poirier said that for Grondin it calls for hauling and fill and reclaiming it 3:1, with excess fill from Grondin’s other sites brought to the pit and dumped, and there is a requirement for a safety fence..

Mr. Bushey said that the standards that apply under the Notice of Intent to Comply relate to protection of significant wildlife habitat, disposal of solid waste, groundwater protection, natural buffer strips for protected natural resources (i. e., wetlands), setbacks for private and public roads, natural buffer strips between limited excavation and property boundaries, erosion and sedimentation control, surface water protection and stormwater management, traffic, noise, dust control, reclamation and blasting. He noted that not much is there about safety and security. He said his interpretation of what is proposed could include some statements about stability of the rock and measures to insure stability of the rock, of which there are many, depending on the rock surfaces encountered.

Ms. Robie said the Board needs to consider whether or not to recommend to the Council that the language suggested by Mr. Bushey should be added, as well as considering whether to recommend approval of the three instances where slopes are addressed: page 1, C 5) a), page 2 C 5)c), and page 3 C 6 a) All these sections say the same thing, that the slope limitations shall not apply provided the quarry is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the Provisions of MRSA 490-Y. Ms. Robie asked what kind of review is done when an application is filed under this Notice. Mr. Bushey replied that initially there is not, but upon renewal a yearly annual inspection will be done by Mark Stebbins. He confirmed to Ms. Robie that there is no site plan review by the DEP, and has not been since 1995. Ms. Robie asked if the interaction between the State’s Notice Intent to Comply and Gorham’s ordinance is that a quarry or a borrow pit must file with the State but then they also must obtain site plan approval from the Town. Ms. Burns replied that the quarry has to file the Notice of Intent with the Town and must get a mineral extraction permit from the Town, as

opposed to a site plan approval; however, that does adopt some of the special exception standards as well, so it is the specific standards of the Mineral Extraction Ordinance and then certain specified special exceptions standards that the Town reviews each application for, whether borrow pit or quarry. Ms. Burns said that review and approval must occur prior to commencement of operations.

Mr. Fickett confirmed that the DEP does not review the permit application but do inspect it after the first year. Mr. Fickett asked what is reviewed after the first year, what is approved by the Planning Board or just approve what was stated in the Notice of Intent. Ms. Burns said they look at what was put in the Notice of Intent, which is expected to continue to be in compliance, and they also look t the standards that are in Section 490-Z of the statute, as every quarry subject to the statute must operate in compliance with that Section. Mr. Bushey noted that is for operations that exceed one acre in size. Mr. Boyce confirmed that Mark Stebbins would do the yearly inspections.

Walter Stinson, Sebago Technics, engineer for Shaw Brothers, explained that the Notice of Intent program was put into place so that each operation within the State would operate within a set of reasonable standards that the DEP studied for a number of years and finally enacted into law in 1995. He said that as Mr. Bushey indicated, DEP looks at such things as drainage, wildlife habitat, setbacks, blasting, reclamation, and the operator must have a neighborhood meeting with the abutters, a public informational meeting, before he can submit. Mr. Stinson said the State has a mining coordinator, Mark Stebbins, who visits every site before they issue their permit by rule, and the operator is required by law to operate according to those standards. As an example, Mr. Stinson noted that one of the standards is that only a certain number of acres can be opened at any time before a reclamation program is started. With aerial photography technology now available, the pits can be examined and the opened area is easily determined. If there are complaints registered by neighbors, the Department will investigate them, and if there are any violations, the operator must correct them and is liable to be fined.

Mr. Zelmanow asked what the Council's intent is with regard to the language in Section 5 a), which sets slopes at 3:1 and says that if a Notice of Intent has been filed, the slopes of the quarry "may be steeper" and does not appear to be a complete waiver of the slope requirement. Ms. Burns said that "may be steeper" means without restriction, provided that they are operating under the Notice of Intent, which itself could provide a slope standard, depending on the type of minerals being extracted from the operation. She said that the language "may be steeper" means without limit, as the other provisions of 5 b) and 6 a) do. However, if the Board is concerned, language could be drafted so that the three provisions could have the same language.

Mr. Stinson said that 6 a) refers to an "existing pit" whereas the other articles apply to new pits, and an existing pit could be allowed to go to 2:1. Mr. Zelmanow said that if the intent is to exempt quarries and pits from the slope requirements, as long as they are operating under the Notice of Intent, then that should be spelled out in all three places for purposes of consistency. Mr. Hughes suggested using the 6 a) language in all 3 instances. Ms. Robie asked Ms. Burns to make that language consistent.

Ms. Robie asked Mr. Bushey if it is generally known what kind of rock will be encountered before opening a quarry. Mr. Bushey said he would assume that some amount of due diligence and understanding is known of what the land holds for either rock or a borrow pit or a gravel pit operation, that generally the investment would not be put into such an operation without having an idea of what you are going to run it. Ms. Robie then asked if it is reasonable to ask someone making a quarry application to provide a detailed reclamation plan because it is fairly well known

what they will run into as they go through the life a quarry. Mr. Bushey replied that was probably fair and reasonable.

Ms. Robie asked if the Board will recommend these modifications as they are written, or will they propose modifications. Mr. Hughes said that the safety issues raised by Mr. Parker need to be added in the cover letter to the Town Council. Ms. Robie said that Mr. Bushey recommends that the safety issues for people accessing and the stability of the rock be added to the Ordinance because the items covered by State law do not deal with safety for access or have a specific requirement for stability and reclamation. Mr. Zelmanow agreed with adding language that the Planning Board can impose safety measures to address public and wildlife safety concerns but not put in specifics about fencing or signage, but that the Board can deal with the issue on a case by case basis. Ms. Robie concurred, so long as the Board has the ability to do so under the Ordinance. Ms. Burns commented that the site plan language gives the Board broader authority to impose conditions, but the Mineral Extraction language is limited to the specific standards in that ordinance, so the Board may wish to add something specific as to signage and fencing, or, put in something broader that the Board may impose conditions regarding safety which may include but are not limited to things such as fencing and allow the Board to do it on a case by case basis. She said she could draft the alternatives. Mr. Boyce, Mr. Zelmanow and Ms. Robie said they preferred the latter alternative to allow the case by case analysis.

Mr. Zelmanow said he has an issue with 5 a) with totaling eliminating the slope requirements within the buffer strip from public rights of way, so if there is a waiver of the buffer, then the operation can closer to a public way. Ms. Robie agreed and asked what a remedy might be. Mr. Zelmanow suggested leaving the slope 3:1 and not allow the waiver, or, in the alternative, address the issue with fencing. Mr. Fickett confirmed that within the buffer, the slope should be left at 3:1. Mr. Hughes and Mr. Fickett agreed that it should not be changed; Mr. Boyce felt it should be addressed on a case by case basis, that the Mineral Extraction ordinance was written around gravel pits, but in the quarry consideration, there needs to be some consideration about safety. Mr. Hughes said that the waiver requirements for a quarry do not exist, and the requirements for a gravel pit waiver are not the same.

Mr. Boyce referred to the quarry application before the Board. Ms. Robie said she would defer to counsel as to the appropriateness of discussing a specific application in the discussion of ordinance changes. Ms. Burns said it is not appropriate to discuss a specific application, but general questions can be answered, not by reference to a specific plan, by the applicant since he has operated other facilities of this nature. Ms. Burns said this will be a general applicability ordinance for all operations.

Mr. Boyce asked Mr. Shaw to summarize how the H Pit is operated, the steepness of its slopes, what are the benches being used and might those might be reduced to as the applicant works his way out of the pit.

Danny Shaw, Shaw Brothers, noted that the ordinance allows trees to be cut within 100 feet but no blasting is allowed until 150 feet, so benching would not start until 150. The benches in the H Pit were approved at 30 feet down, 10-feet out, a typical bench in the State of Maine. He said that some of the laws are loose because each quarry is different. The reclamation would look like a ledge wall on an off ramp of the Maine Turnpike. Mr. Boyce confirmed with Mr. Shaw that any falling material would have a place to drop with a lesser impact. Mr. Shaw said that the Federal law deals with employee safety, no loose rock, no higher than what the equipment can reach; he said he would provide the Federal reference to the Town Planner for forwarding to the Planning Board. Mr. Boyce asked if the State establishes the 30/10 dimensions and would that be

the default if the proposed ordinance changes are approved. Mr. Shaw said that the State does not establish those dimensions and that all the quarries they operate have those dimensions. Mr. Shaw told Mr. Zelmanow that his insurance company does not mandate any slope requirements.

Mr. Parker said he believes these three changes separate try to make a quarry being a pit, that he has no problem doing that, but at the same time recognize that there is a need for some quarry language that would support safety from both above and within if safety is not promoted from within by State standards. Mr. Zelmanow said he would like to reserve his opinion until he sees the language from Counsel on the safety measures. Mr. Boyce said he is in favor but would accept other changes dealing with safety. Mr. Fickett and Mr. Hughes agreed. Mr. Parker said he is in favor, but writing new quarry code should be recommended to the Council in the cover letter.

Ms. Robie summarized by saying that there are five Board members who believe that the Town Attorney should prepare some language that provides for the Planning Board to address the safety of people who might try to access a quarry, probably unlawfully, and to consider that Mr. Bushey recommended in the reclamation section add some language that provides for stabilization of the slopes that the Board can then address. Ms. Robie also asked the Town Attorney to consider whether it would be wise to add any language under the section dealing with buffer waivers, knowing the Board's intent.

Ms. Robie said that at its last workshop, the Board asked the Town Attorney to find out if the Maine DEP standards of adverse impact apply to the asphalt plant because it has to have an air emissions license. Ms. Burns replied that she could not find anything in the statute or the regulations for air emissions licenses that tied them specifically to the "no undue adverse impact" standard. She said that usually a smaller project with an air emission license would not be tied to that standard, and she could not find anything that something not undergoing site location review would be tied to that standard simply because it requires an air emissions license. Ms. Robie said that the Gorham noise ordinance would prevail. Mr. Parker asked Ms. Burns if the State noise standards only applies to a site review operation and therefore are not something the Town can fall back on if the ordinance is inadequate. Ms. Burns said it applies to anything that requires site location review, and also applies to anything that refers to that standard which a quarry application, even though it doesn't require site location review, if it does trigger the Section 490-Y Notice of Intent, it also would subject to it. Ms. Burns said that 3 acres of unvegetated area is what triggers site location review, except for other things that independently require that standard to be applied, such as a quarry of a certain size.

Ms. Burns confirmed to Ms. Robie that State standards will apply to the quarry, except as Mr. Bodwell explained that with the Town's current noise standard it would be the State standard that is applied. Mr. Boyce asked Mr. Bushey to confirm that he is reviewing both the asphalt plant and the quarry for the Town, and asked him to compare the standards of review for the asphalt plant to DEP site law to determine if the Town's ordinance strong enough, or if in Mr. Bushey's opinion, more protection would be afforded by site location review by DEP. Mr. Bushey confirmed that he is reviewing both the asphalt plant and the quarry, that typically the scope of his review relative to the asphalt plant involves most emphasis on stormwater management, erosion and sediment control and a few other site plan-related standards. He said that if the project were to be reviewed under site law, it would probably go beyond what he is involved in, such as natural resources, wildlife and fisheries habitat issues, buffer issues, groundwater protection issues. Mr. Bushey said those issues would be covered more in depth if the project because of its size had to be reviewed under DEP site law.

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Ms. Robie commented about the language discussed in Section H, the Noise Abatement section, proposing to restrict noise easements to easements between industrial lots, and asked if the Board also intended to restrict the mutual noise easements in Section C 5) 3). Ms. Burns said if the Board wishes to place a restriction in Section C to make it clear that the noise portion of the reduced portion is only to apply with abutting industrial lots, as opposed to the buffer reduction, which is allowed anywhere someone is willing to grant an easement, language can be added to make that clear. The Board concurred that Ms. Burns add that language.

Ms. Robie noted that an industrial use, unless it triggers DEP site law, is not subject to the State's noise standards and is only subject to the Town's standards, and that in Mr. Bushey's opinion, site law covers issues not covered by Gorham's site review. She also commented about adding specifics to afford interim protection to residences in Section H based on Mr. Bushey's suggestions. Ms. Burns noted that she will include potential alternative language in the noise standard.

Ms. Robie said that the big issue is the question of site law versus Town of Gorham site plan review.

The Board agreed that the meeting on August 20 should begin at 6:00 p.m.

Respectfully submitted,

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