



Town of Gorham
AUGUST 20, 2007
PLANNING BOARD MINUTES

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

Members Present:

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

Staff Present:

DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
NATALIE BURNS, ESQ., Town Attorney

Members Absent:

DOUGLAS BOYCE

Staff Absent:

BARBARA SKINNER, Clerk of the Board

The Chairwoman called the meeting to order at 7:00 and read the Agenda. The Planning Director called the roll, noting that Mr. Boyce was absent.

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

PUBLIC HEARING – *Continued from August 6, 2007*

Discuss proposed amendments to the Gorham Land Use and Development Code, Chapter II General Standards of Performance, Section I. Environmental, Subsections 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 Subsection 1(H) Noise Abatement for all uses and development.

Ms. Robie announced a one-hour period for public comments, and asked that those comments be confined to the zoning text amendments. Speakers will be limited to 5 minutes and are asked to give their names and addresses for the record. She noted that all meetings of the Board are public, the Board is not permitted to meet in private and Board members are not allowed to discuss matters before the Board with individuals; rather, the Board's job is, as seven individuals, to come to a collective decision where the majority rules, given the information provided by the Planning Office, experts' opinions, and the Board's best judgment. Ms. Robie noted that any citizen can propose Ordinance amendments and, before acting on any such amendments, the Town Council is required to send potential amendments to the Planning Board for public hearing and for the Planning Board to then make its recommendation to the Council. She said that the Planning Board is free to recommend modifications to the proposed amendments, but the Town Council is not obligated to follow either the Planning Board's recommendations, nor to adopt their proposed recommendations. Ms. Robie explained that after the Planning Board has voted on its recommendations, those recommendations will be sent in their entirety to the Town Council, and there will be an accompanying letter explaining why the Board is making its proposals. The Town Council is required to hold a public hearing on the Board's recommendations, at which time the Council will make their decision.

PUBLIC COMMENT PERIOD OPENED:

Bob Morrill, resident of Westbrook, commended the Planning Board for its efforts. He noted that any changes to the ordinance adopted by the Town Council need to be followed by individuals such as the Code Enforcement Officer. He also commended Shaw Brothers as good corporate citizens who are synonymous with Gorham and said they should be given every opportunity to do what they are trying to do on Route 237. He explained his presence at the meeting as a result of being next door to Plan-it Recycling, a project approved by the Planning Board which has had unintended consequences and which he considers an

embarrassment to both Gorham and Westbrook. He recommended caution in the issue of noise waivers, how they are written, and how they can be enforced.

Walt Stinson, Sebago Technics, engineer for Shaw Brothers, responded to Mr. Morrill's concerns about noise by saying that he believes that the noise standards being considering by the Board are more restrictive than the standards under which Plan-it Recycling was approved.

Mary Fagerson, 30 Ridgefield Drive, thanked the Board for the time it has expended and the amount of responsiveness shown to public comments, and hoped that the Town Council will agree with the Board's suggestions.

Theresa Dolan, 309 Mosher Road, thanked the Board for the job it is doing. Ms. Dolan referred to her letter of August 7, 2007, dealing with the case of Whiting v. Seavey, of February, 1963, Hancock County, to illustrate the ramifications of the inappropriate use of reciprocal deeds. She noted that an easement deed will follow the property over the course of years. Ms. Dolan suggested that Mr. Shaw continue his application with the ordinances as they now stand.

Chris Dodd, 13 Joseph Drive, said he spent some 30 years of his life next door to a stone quarry, and recommended that the issues of noise and dust control be considered in light of enforcement, particularly the amount of dust created by crushers.

David Babino, 36 Longmeadow Drive, indicated his position against the asphalt plant is due to environmentally caused cancers in his mother, his wife and his daughter. He asked the Board to take into consideration the environmental risks which he believes are overwhelmingly detrimental.

Russell Sprague, 184 Libby Avenue, commended the Board for its efforts and work. He said that the process needs to be slowed down and that the issues being considered need to be studied more in depth, particularly with regard to noise and quarry standards such as safety and reclamation. He suggested that the Board recommend to the Town Council that the changes be considered in committee with a more in-depth view of future impact on development in Gorham.

Hans Hansen said Shaw Brothers does a good job. He asked how many people drove to the meeting, how many people have paved dooryards, society has decided that everything has to be paved. He said that as long as these requirements are implemented, more hot top, more gravel, more quarries are required.

Melissa Dudley, 21 Sebago Lake Road, expressed concern about the precedent which will be set by changing ordinances on a case-by-case basis. She said that if an application does not comply with an existing ordinance, it is the application that should be changed, not the ordinance. She noted that moving the asphalt plant back behind LaChance Brick does not constitute "out of sight, out of mind," but will instead increase the impact to a larger number of residents, such as those residing on Libby Avenue. She concurred that there is a need for asphalt but the project should not be located so close to residential neighborhoods.

David Homa, Fort Hill Road, noted that people who purchase asphalt have a direct impact on people around the asphalt producing area. The plant in Westbrook is not bounded by a residential area. Relocating the asphalt plant behind LaChance does not change the point source of pollution or noise. He asked if the plant is moved behind LaChance, will LaChance constitute the berms, and recommended that the same height of berms as in the first site be required for the second site. He asked the Board to consider the effect of the noise waivers on successive property owners. He said projects such as this one need to be in appropriate locations so that the ordinance changes now being considered are not necessary. Mr. Homa also noted that the Comprehensive Plan and the ordinances need to reflect what is happening now in 2007 and beyond, not what happened in 1993, and this is a step toward that, but it cannot stand alone in the whole process of permitting.

Tina Ruel, 13 Joseph Drive, expressed concern about the pollutants associated with an asphalt plant. She recommended that the ordinance changes need more study.

Sarah Hamill, 163 Mosher Road, newly moved to Gorham, indicated that the prospect of the asphalt plant and quarry as a close neighbor generating harmful pollutants has prompted them to look elsewhere outside the Town of Gorham to live. She urged the Board to be cautious as it reviews the ordinance changes.

Alene Bowler, 190 Mosher Road, expressed concern about hours of operation as expressed in the proposed ordinance and suggested that the brickyard not be considered an industrial operation.

Jennifer Everett, 184 Libby Avenue, noted that inasmuch as Shaw Brothers was awarded the bypass contract without the benefit of this plant, obviously they don't need this plant to continue with their construction projects. She said that the way the Board reviews these ordinance changes will impact the community now and in the future, citing as a prime example of a shortsighted decision allowing a property owner to permanent waive the noise standard even if the land is zoned industrial, which severely restricts how a parcel of land may be used in the future. She said that changing hours of operation is specific to this project, it is not appropriate to change an ordinance for one project, and it looks like bias. She said that the Board needs to recommend to the Town Council that a committee be formed to write a separate quarry standard and to recommend a complete review of the Land Use and Development Code.

David Kent, 726 Fort Hill Road, said he supports the proposed changes and that this project pointed out some flaws in the ordinance that needs to be corrected. He asked for clarification on the noise standard, saying that a limit of 55 dBA could pose problems with even his tractor, and hopes that agricultural operations will not be impacted by that limit.

Michael Goldman, 23 Clearview Drive, Gateway Commons, asked the Planning Board to visit Gateway Commons and see what a nice kid-friendly neighborhood it is now so as to compare it later with an asphalt plant and quarry in operation near by. He referred to Ms. Robie's definition of the Planning Board's role as expressed during the October site walk as being the review of an application according to the standards and ordinances laid down by the Town, not changing them in the middle if they don't quite fit. He said that clearly this application is not meeting those standards or there would not be the present discussion about changing them. He said there may be good reasons for revising the ordinances, as they may be flawed or inadequate, and there should be a thorough review and discussion of how they affect everyone, not just the applicant. He said that this application should be looked at in light of the current ordinances. He also noted that there is a public image of impropriety, even if it is unintended or untrue, if the ordinances are changed in the middle of a hearing on an application.

Danny Shaw, Shaw Brothers, said that it is not a question of changing the rules in the middle of the game, it is just asking for the Board to be able to look at the project the way it always has other projects. He said that no one has ever read "point source" the way the neighborhood has read it, which would mean that you can't even start a lawn mower in the Town of Gorham. A noise easement has to be in a recordable deed recorded at the Registry, but the ordinance does not provide a vehicle for doing that, even though it has been going on in the Town for years in the Industrial Park. The Town has approved quarries with bench sloping but quarries haven't been dealt with separately, the Ordinance has never provided the tool to do that. He said that the only thing being asked for specific to this plant is the 100 feet around it, the whole site is industrial and the only time the hours of operation are restricted is for the gravel pit, because the gravel pit law overlays the industrial law, but the land has been zoned for industrial use since the 50s. He said these changes give the tools to do what has always been done in the past with this Board.

PUBLIC COMMEND PERIOD ENDED.

Ms. Robie asked the Town Attorney to read the section regarding noise, specifically Chapter II, Section 1, H. Noise Abatement, 1). Ms. Burns read the proposed change as follows: (deletions are struck through, additional language is underlined)

“Noise is required to be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. Noise may equal but not exceed an ~~average of 75 decibels at 600 cps~~ hourly A-weighted equivalent sound level of 75 decibels (dBA) at any boundary line except

- a. where a non-residential use is approved after (date of Planning Board hearing of August 20, 2007) on a) a lot that abuts residential uses in existence at the time that the new use is proposed. The noise from such a use may be equal to but not exceed an hourly sound level of 55 dBA at any property line between the existing residential uses and the proposed use; or
- b. within rural or residential zones where noise from non-residential uses may be equal to but not exceed an hourly sound level of 55 dBA at any property line. For purposes of this subsection, a residential zone shall be any zoning district where new residential uses are permitted.

The sound limits established by this section shall be as defined by ANSI standards and shall not apply to agricultural operations. This section shall not apply to mineral exploration, excavation or gravel pits that are subject to the provisions of Chapter II, Section, Subsection C(5)(a)(3) of this Code.”

Ms. Burns said that reference is to the provision of the Ordinance that allows the noise easements between an industrial property and a gravel pit property.

Mr. Zelmanow asked if the wording “The noise from such a use may be equal to but not exceed an hourly sound level of 55 dBA at any property line...” should instead read “The noise from such a use may be equal to but not exceed an hourly *A-weighted equivalent* sound level of 55 dBA...” Ms. Burns said that the phrase “A-weighted” was not included at this point because it was included earlier on, but that “dBA” itself means an A-weighted scale unless the sound expert agrees that the phrase should be included. Charlie Wallace, sound expert, said that the wording “hourly equivalent sound level” needs to be included, but if “A-weighted” with “dBA” in parenthesis has been defined earlier, then it does not need to be included later on. Ms. Burns said she will insert the “A-weighted” language, as well as the word “equivalent.” Ms. Burns confirmed to Mr. Zelmanow that she will add the language that agricultural operations are still held to the 75 dBA and are just exempt from the 55 dBA.

Based on a suggestion from Mr. Parker, the wording “...except where a non-residential use is *approved*...” should be changed to “non-residential use is *proposed*.. In addition, in paragraph a) above, the wording “...existing residential uses and the *proposed* use” should be changed to read “... existing residential uses and the *approved* use.”

Ms. Fossum noted other changes made by the Board during its workshop session involving Section 4, b) (3), where the Board inserted the following language: “The Planning Board may also include conditions of approval that relate to the safety and protection of persons who might access the site, including but not limited to site or operations area fencing and signage.”

Ms. Burns spoke about Section 5, a) (4)(a), where the Board asked that revised language read as follows: “Noise generated at the excavation site, including noise generated within the reduced setback area may not exceed the noise requirements set forth in Chapter II, section 1 (H)(1) of this Code.”

Ms. Fossum read the Board’s change in 6)(b), under “Reclamation” to include the following language: “The reclamation plan for any quarry shall include specific provisions to ensure the stability of any exposed rock faces.”

After a discussion on voting procedures, the Town Attorney suggested that a motion be made to consider all the amendments as a whole, and then to have an amendment to the motion to consider any individual portion.

Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion that the Board adopt and recommend to the Town Council for their consideration the proposed amendments to the Gorham Land Use and Development Code, Chapter II, General Standards, Section I, Environmental, Subsection C, Mineral Exploration, Excavation and Gravel Pits, Subsection 5) Operational Requirements for New and Existing Pits, and Subsection 6, Reclamation relative to slopes within quarries, noise and hours of operation, and Subsection 1(H), Noise Abatement, for all uses and development.

Discussion: At the Town Attorney's suggestion, Mr. Zelmanow amended the motion as follows:

That the referral to the Town Council be those sections of the Ordinance submitted to the Board by the Town Council and as amended by the Planning Board over the course of meetings, workshops and public hearings, the final form of which will be prepared by staff with the assistance of the Town Attorney to be sent to the Town Council with the Board's recommendations. The Motion as amended by acceptable to Mr. Fickett, seconder of the original Motion.

Discussion: Mr. Parker asked that the change to Section C 5(d), which provides a 100 foot buffer in which the hours are 24 by 7. be separated out and voted on separately.

Mr. Zelmanow amended his motion to withdraw Section C 5(d) from consideration to be voted upon separately. The motion as amended by Mr. Zelmanow, removing Section C5(d), CARRIED, 6 ayes (Douglas Boyce absent).

Edward Zelmanow MOVED and Thomas Hughes SECONDED that Section C5(d) as submitted to the Board, reviewed and modified by the Planning Board, be sent back to the Town Council with the Planning Board's recommendations. Motion CARRIED, 4 ayes (Fickett, Hughes, Stelmack and Zelmanow), 2 nays (Parker and Robie) and 1 absence (Boyce).

Ms. Robie thanked all those who had spoken concerning the proposed ordinance changes and said that she believes the Planning Board has done the best job possible in evaluating the changes. She noted that it is the business of the Town Council to make the laws and to change ordinances, and hoped that the Town will consider the Board's recommendations. Ms. Robie said that the Board's recommendations will be accompanied by a letter to the Town Council. Mr. Parker observed that inasmuch as the asphalt plant will not undergo site review, the State's noise limitation review is lost, particularly the lower allowed nighttime decibel level. Mr. Zelmanow said that the issue of a comprehensive review of the noise standard needs to be addressed in the Board's cover letter.

Ms. Robie asked Mr. Wallace what the daytime level is under DEP's noise standards. Mr. Wallace replied that the daytime levels vary according to the zone in which the noise occurs, and there is a concept under the State's standard of a "protected location." Mr. Wallace said that the protected location gets a different standard by different zones, 55 dBA daytime and 45 dBA nighttime, and there is also a "quiet area," which translates to equal or less than 45 dBA from 7:00 a.m. to 7:00 p.m. and equal or less than 35 dBA nighttime, or 7:00 p.m. to 7:00 a.m.

3. SCHEDULE ADDITIONAL MEETING IF NEEDED;

The Board concurred that no additional meeting was necessary.

4. Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion to take up a new item. Motion CARRIED, 6 ayes (Douglas Boyce absent).

Ms. Robie explained that the new item was to reschedule the September 10, 2007 Planning Board meeting to September 17, 2007. Mr. Stelmack noted that he might not be able to attend on the 17th. Ms. Fossum said she did not believe the new date would cause any hardship for any applicants and the required notice period would be met.

Michael Parker MOVED and Thomas Hughes SECONDED a motion to move the September Planning Board meeting from the 10th to the 17th. Motion CARRIED, 6 ayes (Douglas Boyce absent).

5. ADJOURNMENT

Thomas Fickett MOVED and Michael Parker SECONDED a motion to adjourn. Motion CARRIED, 6 ayes (Douglas Boyce absent).

Respectfully submitted,

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