



Town of Gorham
PLANNING BOARD WORKSHOP NOTES
August 20, 2007

A workshop meeting of the Gorham Planning Board was held on Monday, August 20, 2007, at 6:00 p.m. in the Municipal Center Council Chambers, 75 South Street, Gorham, Maine.

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

Ms. Robie announced that the workshop is a continuation of the workshop begun on July 31, 2007, of the Planning Board's review of the zoning text amendments referred to it by the Town Council for Chapter II, General Standards of Performance, Mineral Exploration, Excavation and Gravel Pits and Noise Abatement. She said that the Board will work from a draft of language prepared by the Town Attorney after the Board's workshop on August 6, 2007.

Agenda Item

1. **Notes of July 31, 2007 Workshop Meeting.**
2. **ZONING TEXT AMENDMENTS – CHAPTER II, GENERAL STANDARDS OF PERFORMANCE, MINERAL EXPLORATION, EXCAVATION, AND GRAVEL PITS and NOISE ABATEMENT**

Continuation of Discussion from 8/6/07:

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 announced the items still needing to be discussed and the language to be refined. The first of those items involves the slopes for quarries, both while they are open and in reclamation. The second deals with information received during the last workshop that the industrial plant does not fall under the constraints of Maine DEP site law regulations because it has an air emissions permit, as well as information received that DEP's site law is more stringent than Gorham's site law. This consideration relates to the section of the ordinance allowing the operation of an adjacent gravel pit or quarry consistent with the hours of the industrial use. Ms. Robie said that the Planning Board recommended to accept that without those two pieces of information which emerged at the last workshop, so the Board needs to deal with that. In addition, the Town's noise consultant has proposed a change to the language being recommended by the Board dealing with the Noise Abatement standard.

Beginning with the slopes issues, Ms. Robie said that the Town Attorney had been asked to draft language addressing the safety of not only people working in the pit but the safety of those accessing a gravel pit or gravel. Ms. Robie read the proposed language as follows: "The Planning Board may also include conditions of approval that relate to the safety of persons

working within a gravel pit or quarry, as well as the safety and protection of persons who might access the site, including but not limited to site or operations area fencing or signage.”

Walter Stinson, Sebago Technics, appeared on behalf of the applicant and said that the operations area is under the control of OSHA and MSHA, both Federal agencies that control the safety of people working in the pit, so from their standpoint it is risky for the applicant if the Board imposes a condition which would circumvent something they are required by Federal law to do. He said they have no problem dealing with fencing and signage, but they are concerned that the Board could impose something that goes against Federal law.

Ms. Burns said that if the Board were to impose a condition that went outside of the fencing and signage conditions, which were the Board’s specific concerns at the last workshop, which somehow interfered with OSHA requirements, the applicant is always free to come back before Board to state that the Board’s condition is in violation of those requirements ask the Board to amend that condition. She said, however, that she found it difficult to imagine what kind of condition the Board would place on an application that would directly conflict with OSHA requirements.

Mr. Parker said his concern is not for the workers, as they are protected under OSHA requirements, but for non workers who might be accessing the pit, so he believes that the wording dealing with the “...safety of persons working within a gravel pit or quarry” can be eliminated. Mr. Hughes concurred with Mr. Parker, as did Mr. Fickett, Mr. Stelmack and Mr. Zelmanow. The proposed wording therefore would read: “The Planning Board may also include conditions of approval that relate to the safety of persons of persons who might access the site, including but not limited to site or operations area fencing or signage.”

The Board then moved to a discussion of slopes, C 5 a). Ms. Robie read what had originally been proposed by the Town Council: “This slope requirement shall not apply to 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 M.R.S.A., Section 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection.” She read as well that “No excavation is permitted within the buffer strip of any pit, including a quarry...” Ms. Robie said that what the Board has learned about Section 490-Y is that there is no initial review of the materials sent to the sent, it is reviewed on a yearly basis, and the State’s requirement for slopes is that the quarry must be stabilized and benched to prevent falling rock, but does not require any specific face slope as it is exposed. She said that it was determined that there is no expert on quarry reclamation to advise the Board.

Mr. Parker commented that the Board is dealing with this issue as quarries are presently not addressed in the Town’s ordinances, and State standards demonstrate that it is a complex issue; however, it would appear that quarry slopes do not need to be the 3:1 that gravel pits are. Therefore, he favors it as it is written.

Ms. Robie said that the Brandy Brook quarry was approved with a reclamation plan that does require backfilling to achieve the 3:1 slopes, so the present Ordinance has been complied with. Ms. Fossum said that the expansion of the other quarry, the H Pit, involves mining below the water table and once the sand and gravel is removed, those faces will be benched both below and above the eventual water line.

Mr. Stelmack commented that had there been problems with quarries throughout the State, the State’s regulations probably would have been amended since they were last addressed in 1995,

and since there have been no amendments, he is comfortable with imposing those requirements on the applicant and favors leaving the proposed language as it reads.

Larry Grondin, RJ Grondins and Sons, operator of the Brandy Brook quarry, came to the podium and said that within the DEP's program, each individual quarry is reviewed, and based on conditions at that quarry, very site-specific recommendations are made. Mr. Grondin said that insofar as the reclamation plan at Brandy Brook is concerned, excavation will be done to ½:1 slope, and there were two reclamation plans under consideration, one which would leave the quarry with that slope and the other to bring it back to a 3:1 slope, and they chose to bring it back to the 3:1 slope.

Mr. Fickett, Mr. Hughes and Mr. Zelmanow concurred with Mr. Parker and Mr. Stelmack about leaving the proposed language in place. Ms. Robie said she too concurred, and asked how other quarries would proceed if the proposed language were adopted. Ms. Burns replied that if the Board has approved a reclamation plan, they would have to come back before the Board if they want to take advantage of the new ordinance language. Ms. Burns also indicated that such an applicant would have to demonstrate that it could meet the safety standards if it were not going to utilize the 3:1 slope.

Mr. Zelmanow asked if the Board had dealt with the slope requirements in C 5)c). Ms. Robie replied that she assumed that the Board agrees with all of the places where slope requirements are covered by State law involving quarries. Ms. Robie says that it also takes into account the buffer requirement, as well as the reclamation section. Ms. Burns confirmed to Mr. Stelmack that where extraction activities occur in an area where a buffer has been reduced then the 3:1 slope remains in effect, which is a change proposed by the Board. The Board concurred with recommending the language in all of the sections involving slope requirements.

Ms. Robie then asked the Board to consider the issue involved in Section C 5)d), that because the asphalt plant requires an air emissions license, it is not therefore subject to other DEP regulations and that site law, as administered by the DEP, is more stringent than Gorham's site law. Ms. Robie said that initially the Board had discussed recommending that the hours of operation for 100 feet into an abutting quarry of an industrial use that uses the material be consistent with the hours of operation of the industrial use. However, when the Board did so, they had two pieces of information that in reality were not factual; one is that the industrial use, the asphalt plant, would be subject to Maine DEP regulations because it requires an air emissions license, which is not the case. The second is that Maine DEP site law is more stringent than Gorham's site law.

Mr. Stinson confirmed that the asphalt plant would require an air emissions license from DEP, but beyond that, in this particular situation they will seek four permits from DEP: the air emissions license, a stormwater management permit, which is a big part of the site location review, a NRPA Tier I wetland alteration permit, and a permit from DEP under their mining law. He said this will require a fairly extensive DEP review, albeit it will not be site location. He said this change came about as Mr. Shaw indicated to address some of the Board's concerns and those of abutters regarding the location of the plant. With this change they can move the plant back further and shield it more from both the road and the abutters. Ms. Robie asked Mr. Stinson how the DEP mining law review would impact the asphalt plant; Mr. Stinson replied that it would not, the quarry would be reviewed under the Notice of Intent. Mr. Stelmack asked what additional DEP review would be achieved through a site location review. Mr. Stinson replied that there are some 20 items reviewed, such as archeological and historical character of the area, stormwater, emissions, and solid waste disposal.

Ms. Robie said that any project that undergoes Maine DEP site law review is subject to the noise standards of the State. Mr. Stinson agreed, saying that there are specifics in that language, and it might be good to ask the Town's noise consultant if the language he is proposing is that much different than that of the State.

Mr. Hughes confirmed to Mr. Stinson that the Board did not ask the applicant to move the plant behind LaChance Brick, that this was done at someone else's request. Mr. Stinson said that he understood that the Board wanted to minimize the view of the plant and the impact of the plant on the abutters.

Ms. Robie said she disagrees in principle with modifying the ordinance to avoid Maine DEP site law and that it is inappropriate from the feedback from the public as well and from the standpoint of modifying the ordinance. She said she understood the issues but feels that it is not the right thing to do, particularly since it is now evident that it will not undergo the rigorous review as would have been done by the State of Maine.

Mr. Hughes said that the overall good would be served by moving the plant back and allowing the 100 foot variance overall improves the working and site conditions and is an improvement for the neighbors as well.

Mr. Zelmanow said he does not have a problem with the language as it is proposed because it is not an automatic approval inasmuch as the Planning Board "...may approve..." the additional hours of operation, suggesting that the applicant has to request that of the Board, and at that time the Board can consider the request and perhaps even deny it.

Mr. Fickett said he concurs with the proposed language, and would rather keep the review process on a local level more than the State level. Mr. Stelmack concurred with Mr. Fickett, Mr. Zelmanow and Mr. Hughes for the reasons that have been stated and said he believes the asphalt plant/quarry application will get a good shakedown through the air emissions license application, stormwater management, the mining law, NRPA Tier I, but he would like to hear from the noise consultant, Charlie Wallace, how the proposed noise standard compares to the State before making a final decision.

Mr. Parker said he sees the language as a side step for site plan review, that it is a 3-acre plant and should be site plan review by the State, which would invoke very focused thinking on the sound it would generate. He still opposes the language.

Ms. Robie commented that this is a board where the majority rules and the Board members' stands are now known.

Ms. Robie then began a discussion on the noise aspects involved in Section H of the General Performance Standards, and then is referred back to C 5a) 3) and C5a) 4). Ms. Robie explained that early on the Board drafted language to be recommended to the Town Council that it accept a measurement of "an hourly A-weighted equivalent sound level of 75 decibels (dBA) measured at any boundary line." At the Board's last workshop on August 6, 2007, language was added to try to protect residential abutters of "...where a non-residential use is proposed after August 20, 2007 on 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 A-weighted equivalent sound level of 55 dBA at any property line between the existing residential uses and the proposed use." Also included is an exception for agricultural operations. However, Mr. Zelmanow noted that in the most recent draft language, there is no sound level limits on agricultural operations, they can

exceed even 75 dBA. Ms. Burns said that if it is the Board's desire that these operations continue to be subject to the 75 dBA measurement, some language can be drafted to deal with that.

Ms. Robie said that the sound consultant has proposed substitute language, as follows: H. Noise Abatement, possible revision 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 an hourly A-weighted equivalent sound level of 75 decibels (dBA) measured at any property line, except within residential or rural zones where noise from non-residential uses may be equal to but not exceed an hourly equivalent sound level of 55 decibels at any property line. The sound level 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 1, Subsection C5)a)3) of this Code."

Ms. Robie said that the Board's original recommended language read "but not to exceed an hourly sound level..." whereas the sound consultant, Scott Bodwell of Resource Systems Engineering, recommends changing that to "an hourly equivalent sound level..." which he considers an important and significant change to make.

Charlie Wallace, president of Resource Systems Engineering, explained the differences between the Board's proposed language and Mr. Bodwell's proposed substitute language is that it goes to the intent of what is to be protected. In the event that the Board's language stands, the only residential parcels that would be protected are those that are directly abutting the proposed development. Other than that, no other parcels would be protected at that or any other level. He said that if it is the Board's intent to protect residential zones in general then the language needs to reflect that. Mr. Wallace said that Mr. Bodwell also suggested that the Board could have it both ways, with its language and the language to protect the zones.

Ms. Robie noted that the start of the regular Planning Board meeting will be delayed by some 20 to 30 minutes.

Mr. Stelmack said he believes that Mr. Bodwell's version is much more protective and therefore he endorses that version. Mr. Hughes, Mr. Fickett, Mr. Parker, Mr. Zelmanow all concurred. Ms. Burns asked the Board to be clear what the residential zones are which would be included in the language. Ms. Robie recited the zones as follows: urban residential, suburban residential, rural, village centers, urban commercial, roadside commercial, industrial, roadside office, office residential and the protection districts of shoreland overlay district, resource protection, and stream protection. She said that the only zone which does not allow residences are the industrial zone only. Mr. Stelmack said that it apply should be anywhere there are existing residences or the potential for residences to occur; Ms. Burns noted that would be any zone. Ms. Robie said she believes that the *intent* of the roadside commercial and industrial zones is to be non-residential. Ms. Fossum said that the other zone which does not permit new residential construction is the Narragansett district, which is purely commercial.

Mr. Parker said it should apply to any existing residence or new residences and no residence should be subjected to 75 dBA. Mr. Stelmack said that would apply to the entire Town and the sound limit should apply to the zones where residences are encouraged, which would exclude roadside commercial, industrial and the Narragansett districts. Ms. Burns said the Board's original language protected the existing residential uses, Mr. Bodwell's language addresses the zones as opposed to the individual uses, and it would be possible to have both together. She said that there could be two exceptions, the first being where a non-residential use is proposed after the date on a lot that abuts residential uses in existence at the time the new use is proposed, and

the second one being or within any residential or rural zoning district. Ms. Burns said it could apply to any zoning district where a residential use would be permitted to be created, which would look at potential future residential uses.

Ms. Robie asked if it would be satisfactory to combine both sets of proposed language, and to identify the districts which permit new residential use. Mr. Parker said he would be more comfortable with that, Mr. Stelmack concurred so long as it would not apply to the entire Town. The remainder of the Board concurred as well.

The Board then considered Section H 2) dealing with allowing uses in industrial zoning districts to permit easements to exceed the 75 decibel limit between industrial uses only. The section also provides review of the impact of these easements by the Planning Board and of mitigation efforts.

Mr. Stelmack referred to a discussion the Board held with Mr. Bodwell on July 31 wherein Mr. Bodwell indicated that in his experience he was not aware of any negative instances due to such easements. Mr. Stelmack said he has no problem with 2). Mr. Hughes agreed with Mr. Stelmack. Mr. Parker said it is clear that the “backside” of the property must still comply with the noise level limit so it looks alright to him. Mr. Zelmanow also concurred.

The Board then discussed C 5) a) 3), the noise limitations within a reduced buffer. Mr. Zelmanow confirmed that the noise waiver within the reduced buffer is limited to abutting properties in the industrial zone. Mr. Parker asked if the wording should read “.pit or quarry...” at the beginning of the proposed section. Ms. Burns said if that is added here, concerns are created in other sections of the ordinance. The Board agreed not to make the change.

Ms. Robie called the Board’s attention to C 5) a) 4), “... the applicant may apply to reduce the buffer from two hundred (200) feet to not less than one hundred (100) feet, which reduction the Planning Board shall grant, provided that the applicant demonstrates: (a) noise generated at the excavation site, including noise generated within the reduced setback area may not exceed an hourly A-weighted equivalent sound level of 75 decibels (dBA) (as defined and established by ANSI standards)...” She asked if this section is superceded by the boundaries the Board has established where it cannot be 75 decibels. Mr. Zelmanow suggested adding that the noise generated must be demonstrated conforms to Subsection H 1).

The Board then discussed to Section 6 b) proposed language to a reclamation plan that “The reclamation plan for any quarry shall include specific provisions to ensure the safety and stability of any exposed rock faces.” The Board agreed to strike the words “the safety” from the proposed language.

The workshop adjourned to the regularly scheduled Planning Board meeting.

Respectfully submitted,

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