



**Town of Gorham
November 5, 2007
PLANNING BOARD MINUTES**

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

Members Present:

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

Staff Present:

**DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
BARBARA SKINNER, Clerk of the Board
NATALIE BURNS, Esq., Town Attorney**

The Chairwoman called the meeting to order at 7:05 and read the Agenda. The Clerk called the roll, noting that all members were present.

1. APPROVAL OF THE MINUTES FROM OCTOBER 1, 2007.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion to approve the minutes of the October 1, 2007, Planning Board meeting.

Discussion: Mr. Zelmanow stated that he would abstain from voting as he was not present at the October 1, 2007, meeting.

Motion CARRIED, 6 ayes (Edward Zelmanow abstaining as not having been present at the meeting). [7:09 p.m.]

2. COMMITTEE REPORTS

Ordinance Review Committee – Ms. Robie reported that this Committee has not met.

Sign Ordinance Sub-Committee – Ms. Robie reported that the Ordinance Subcommittee has met twice and a final draft is prepared to discuss with the Town Council in workshop, which should occur in early December.

Private Way Sub-Committee – No report.

3. CONSENT AGENDA ITEMS

Ms. Robie reported that Item B, “Street Acceptance Report, Shamrock Drive,” is removed from the Consent Agenda at the recommendation of both the applicant and the Town Planner. She also said that the applicant in Item D, “The Church,” is not ready and must return for a public hearing, as discussed with the applicant during the 6:00 p.m. workshop.

A. FINAL SUBDIVISION PLAN – “THE CROSSING SUBDIVISION” / “OLD DYNAMITE WAY” / “HIDDEN BROOK DRIVE” – off GRAY ROAD – by MJF DEVELOPMENT GROUP, LLC, MICHAEL J. FERRANTE, MEMBER

Request for final subdivision plan approval of a proposed 29-lot residential subdivision and two roads on 21.6+/- acres off Gray Road. Zoned UR. (M30/L18).

B. STREET ACCEPTANCE REPORT – “SHAMROCK DRIVE” in GORHAM MEADOWS SUBDIVISION – off MAIN STREET by NORMAND BERUBE BUILDERS, INC.

Request for street acceptance by Normand Berube Builders, Inc. Zoned UR, M30, L7.

C. SUBDIVISION AMENDMENT - DOUGLAS KNOLL” / “MARYANN DRIVE” – off WATERHOUSE ROAD & SOUTH STREET – by DESIGN DWELLINGS, INC.

Request for approval of an amendment to remove the requirement for a back-up water supply well for the fire pond by Design Dwellings, Inc. Zoned R; M22/L4.

D. SITE PLAN AMENDMENT– “THE CHURCH” – off 29 SCHOOL STREET – by FOUR BROTHERS, LLC, MICHAEL SALVAGGIO, JR., MEMBER

Request for approval of an amendment to add a 376 square foot deck located on the rear of the building. Zoned VC & UR, M102/L83 & 112.

There being no member of the Board nor any of the public who wished to remove either Item A or Item C from the Consent Agenda,

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion to approve Consent Agenda Items A and C and to remove Items B and D. Motion CARRIED, 7 ayes. [7:20 p.m.]

4. MINERAL EXTRACTION/SITE PLAN – “BRICKYARD QUARRY” AND ASPHALT PLANT – off ROUTE 237/MOSHER ROAD – by SHAW BROTHERS CONSTRUCTION, INC.

PUBLIC HEARING

Request for approval of a proposed quarry operation and hot-mix bituminous batch plant, on 125.5 acres +/-, on land of S.B. Aggregates, LLC. Zoned Industrial, Map 31/Lot 15.

The Chairman opened the hearing by reading the following remarks into the record:

“These are two separate applications submitted by Shaw Brothers, one for the brickyard quarry, the second for an asphalt plant located behind LaChance Brick on Mosher Road. The code officer has ruled that these are separate permitted uses in the industrial district. The quarry is subject to the performance standards for new pits, special exception criteria and selected items of the site plan standards of the Gorham Land Use and Development Code. It is also subject to the intent to comply law of the State of Maine for quarries and requires a variety of permits from the State of Maine.

The asphalt plant is subject to site plan requirements of the Town of Gorham, the requirements of the Industrial zone in which it is located and all of the performance standards of Chapter 2 of the Gorham Land Use and Development Code. It is also voluntarily subject the Maine DEP noise regulations per Mr. Shaw’s consent.

This item is been advertised as public hearing. The Gorham Planning Board rules and the Code require that an application be complete prior to holding a public hearing. This application is not complete in that it is missing a complete photometric plan, plans showing required roadway improvements, wetlands impact for all three phases and a statement from the MDEP that the asphalt plant and quarry combination is or is not subject to MDEP’s Common Scheme of Development regulation. Further the application does not contain enough information to for the Planning Board to make a decision. However the applicant has requested that a public hearing be held. This is his prerogative.

This public hearing will invite public comment for 1 hour this evening. I will then ask for a motion that the Public Hearing be continued. Any time period restriction for action will not start to run as of this date. The time restrictions in our Code call for an application to be acted upon within 90 days of a Public Hearing for a quarry application and 60 days for a major site plan application. The time limitation will only apply once the public hearing is closed. To close the public hearing requires a complete application that the public may comment upon and that contains adequate information for the Planning Bard to make a decision.

I will repeat for the record that the applications are permitted uses in the zones in which they are located. It is the work of this Board to determine whether the applications submitted meet the requirements of the Gorham Land Use and Development Code. If the requirements are met it is the obligation of this Board to approve the applications. We are not allowed to exceed in our findings requirements of the Gorham Land use and Development Code.

We have received a great deal of public comment on these applications and have opened the Planning Board meetings to public comment on numerous occasions. We invite the participation of the community in this process and appreciate all the comments. The comments that are specific in nature and that relate directly to the applications and which direct reference the Code are very helpful to the Board. These are complex applications and technically challenging for all of us.

Tonight the public comments are limited to 5 minutes per speaker unless the speaker is representing a group, which they identify, and then they will be allowed 15 minutes. We ask you to keep your comments specific, and referenced to the Land Use and Development Code and this specific application. We ask you to refrain from repetitive comments. We have captured many concerns identified through public comment sessions. Please refer to Planning Board minutes and lists documented in the chronology of the project, which is available at the back of the room.

When you approach the podium please state your name and address for the record. Comments will be accepted for up to one hour. The Board may ask questions of any one who speaks. The applicant can respond to any comment or ask questions of any speaker. Tonight these questions will be recognized by the Chair after the one hour period of comment so as to allow the maximum number of people to speak who wish to speak.”

Danny Shaw, applicant, approached the podium and said that they only found out this afternoon that the application is not complete. He indicated that this project will be a good thing for the Town and urged that the abutters to the project not be tricked by the adverse propaganda that has circulated about the project. Mr. Shaw cited the positive impact on the environment by the paving of roads, driveways, parking lots and airports. He asked if it would be better to run the old plants and not any new plants, which are much cleaner and much quieter, and if it would be better to rely on very few large plants and not small and portable plants to provide the necessary hot mix. Mr. Shaw asked who pays for the propaganda that has been circulated, that why we are finding out now, after all these years, that these facilities are such a nuisance, and that if true, it would have been more obvious to us sooner.

Ms. Robie cautioned Mr. Shaw and the public to refrain from making political comments during the course of the public hearing. She said that the Gorham Planning Board has one job, which is to look at the application and decide whether it meets the Ordinance, and no political remarks will be permitted.

Continuing, Mr. Shaw said he hopes that the neighbors will agree that they have addressed their concerns with the modifications made to the plan. He said they have gone to great lengths to change landscaping, increase berms, make traffic modifications, move the asphalt plant to a different location that is less intrusive, include fencing, etc. He said that asphalt plants are good neighbors and do fit into neighborhoods, which he thinks they can demonstrate. He said that if anyone calls with a complaint or a concern, they will be on it quickly, and they take their responsibilities to the Town and to the neighborhoods seriously.

Walter Stinson, Sebago Technics, gave an overview of the project and indicated that he would address those issues they regard as threshold issues, which are those dealing with landscaping, drainage, noise, emissions and hydrogeology. Mr. Stinson discussed the acquisition of the property from LaChance Brick and two abutting landowners, and demonstrated the topography of the parcel, noting a rise of about 116 feet from the road to the highest point on the site.

Mr. Stinson said that the applicant is asking the Board to approve all three phases of the project, but noted that DEP approval is needed before they can go beyond phase 1 to mine underneath the groundwater table and for wetlands disturbance. He noted that the major change to the plan since the Board last saw it is the location of the asphalt plant, which has been moved from its original position of 200 feet westerly from the road and 320 feet from the northerly property line. It is now proposed that the asphalt plant be moved to a location behind the existing LaChance Brick building, a total of 360 feet from where it was so that it is now to be 560 feet from the road, and instead of being 320 feet from the northerly property line it is now proposed to be 460 feet. He said that a combination of being positioned behind the Morin Brick building and increased landscaping will shield the asphalt plant from view.

Mr. Stinson said they do not know precisely what the asphalt plant is going to be. They envision that once the pad is constructed, they will bring in a portable plant, but it is difficult to tell exactly what the configuration, the size and the shape of that plant, will be. However, all of the plants generally have storage bins for the aggregate, which will be conveyed into smaller bins by front end loader, there is a bag house, there are conveyors, silos and there is a burner. After the asphalt is made it goes into the silos, the trucks pull under the silos for the asphalt to be loaded, and the trucks leave the plant. All of the access to the plant will be from what they refer to as the northerly access. Mr. Stinson said that the new location for the plant is some 200 to 250 feet behind the existing Morin Brick building.

Mr. Stinson then displayed the phasing plan: phase 1 will include two access drives, all stormwater management facilities, and the asphalt plant pad. The total area of the quarry is just over 56 acres. The first phase comprises about 40 of those 56 acres, and will include taking down the high hill at elevation 216 to approximately elevation 114, over 100 feet of the hill, and some stormwater facilities will be built on the easterly part of that. It is estimated that coming down well over 100 feet over 40 acres will take a long time. Mr. Stinson, at Mr. Parker's request, pointed out the two lots which are now part of the application. Mr. Stinson showed on the plan the second phase of the project, where mining will go under the groundwater table, is just under 30 acres and is less than the area shown in phase 1 because the banks will have to be sloped. The pond, therefore, is going to be smaller at 29.9 acres; although the total quarry will be 56 acres, and adding 40 and 29.9 gives a total greater than 56, the 29.9 is part of the 40. In other words, phase 2 area is part of the phase 1 area. Phase 2 involves going from elevation 114 down to elevation minus 86, a depth of 200 feet, which will be a pond when it is done. Phase 3 will be to take down the intermediate hill, just over 16 acres. The lot for the asphalt plant is 15.7 acres, and the remaining lot for the quarry itself and all of the parcel beyond what is going to be mined is 105.4 acres.

Mr. Stinson said that from the edge of the quarry excavation to Gateway Commons is about 1200 feet; the asphalt plant is over 3000 feet away. The asphalt plant is also over 3000 feet from the subdivision on Queen Street and the edge of the excavation about 1100 to 1200 feet.

Mr. Stinson then introduced Kylie Mason to talk about the current proposed landscaping, which reflects the different location of the asphalt plant.

Ms. Mason discussed the handouts provided to the Board which she said show a significant amount of additional screening. She said that the deciduous trees and plants being proposed multiply by root, which will increase the buffer over time. Additionally, the trees will be of varying heights to provide a full screen. She said she has chosen red and white pines, with the white pine having a soft, thin feathery texture, and the red pine being very coarse, upright fast-growing tree, and both together providing a good screen. She said the buffer along the front of the quarry and the asphalt plant consists of birch, sumac, pine, and in front of that, flowering crab apples, rhododendron, junipers, and ornamental grasses. She showed a photo study which indicates good buffering and said that the only way to see much would be to stand right in front of the brickyard. Ms. Mason also demonstrated the entrance plantings, as well as the 4-foot buffer in front with the

20-foot buffers on the sides. Mr. Stinson reminded the Board about the 20-foot northerly berm which is proposed.

Mr. Stinson said that the stormwater management and drainage plan has been reviewed by the Town's Review Engineer, and the drainage calculations have been submitted to the Maine DEP, which has approved those plans. Mr. Stinson then introduced Shawn Frank of Sebago Technics to discuss the proposed stormwater management proposed for the project.

Mr. Frank said that as this pit will be externally drained, that is with the runoff accumulating within the pit being directed toward the outside, a variance request to the Department of Environmental Protection is required, for which they anticipate receiving a permit this week. Mr. Frank said they are working on responding to the comments from the Town's peer reviewer. Mr. Frank pointed out the locations for two stormwater management ponds to be developed during phase 1 of the project, with the smaller pond in the northeast corner of the property associated with the impervious areas of the northerly access drive, as well as the paving involved with the asphalt plant. He described a swale design directing runoff into a permanent pool pond, 5 or 6 feet deep containing a gravel bench through which the first 18 to 24 inches of runoff will fall into a 6-inch underdrain to provide treatment as well. For larger storm events, there will be standard culverts. He said that the intention of the pond design is to provide not just detention to the runoff associated with the development, but also to provide treatment as well. Mr. Frank said that the second pond, about 4 acres in size, will ultimately run into the 24-inch culvert that crosses Route 237. It is a wet pond, with the first 2 feet working its way down through the bench to the underdrain, being treated, and then flowing out of the pond over a 24 to 36 hour period. This would take care of the 1 to 2 inch storm events, and for the bigger storms there is a series of culverts coming out of an emergency spillway. He said there will be a vigorous maintenance and erosion control program.

Mr. Stinson commented that statistics do not bear out the danger that the public has been led to believe these plants might produce. He showed the Board a graphic of hazardous air pollutants in Maine by source category, which shows asphalt plants at the second lowest level. Mr. Stinson then displayed charts showing comparisons of three plants to demonstrate the number of residential buildings in a one-half and a one-mile radius. The first chart showed a plant in Westbrook with 69 residential units within a half mile and 1800 within one mile, the second chart showed a plant in Portland with 300 residential buildings within a half mile and 3200 within a mile, and the third chart, for the applicant's proposed plant, shows 22 residential buildings within a half mile and 213 within one mile.

He then introduced the applicant's air emissions expert, David Dixon.

Mr. Dixon said he has over 35 years experience in the field of air quality, and owns and operates his own firm, Dirigo Environmental Consultants. Mr. Dixon began his presentation by reaffirming earlier testimony before the Board that (1) he believes the facility will perform in accordance with the specifications of the Gorham ordinance, (2) the proposed project will not cause a violation of the state or federal ambient air quality standards, and (3) it will not cause the kind of adverse public health impacts alleged in various press reports and submittals to the Board. Mr. Dixon noted that this project will require an air emissions license from the Maine DEP and in granting such a license, the DEP will have to find that the emissions are receiving the best practical treatment, that the ambient air quality standards will be met, special conditions will be imposed to insure that the facility operates continuously in compliance with the terms and conditions of its air emissions license. He said that the plant will have to have a bag house, a fabric filter that cleans all the emissions before they are discharged into the air. Mr. Dixon commented that in the graph that Mr. Stinson showed, residential wood heating is now the number one source of hazardous air pollutants in the state.

As had been requested in a previous meeting, Mr. Dixon showed the Board a wind rose indicating that the prevailing wind at the proposed site is from the west through the north, and any emissions from this facility will be transported to the east through the south.

Mr. Dixon said he has reviewed the summary of health effects submitted to the Board just recently, and disagreed with some of the conclusions reached in that summary having to do with 2.5 fine particulate matter and atmospheric transport and indicated that some numbers from the EPA website were quoted in error in the summary. He noted EPA's conclusion that no asphalt concrete manufacturing facility has the potential to emit HAP approaching the major source levels of ten tons per year, and clearly this plant will not be anywhere near that.

Mr. Stinson returned to the podium and noted that the applicant has voluntarily agreed to meet DEP standards on noise impacts from both the quarry and the asphalt plant. He said a fairly extensive noise study has been done, looking at 8 locations around the perimeter of the site, and each location had to meet certain noise limits as established by the DEP, including limits for daytime and night time. In all of those instances, the allowed DEP limits were less than the Town's noise standards, so it is a more stringent review and standard than what is required under the Town's standard. Mr. Stinson said that in each of those 8 locations they were able to meet DEP's standards. In some locations they must perform best management practices which might be the construction of an earth berm to shield noise, and primarily it is the air drill drilling holes in the rock when work begins on the site before they get down into the ground below the rock face. They must institute best management practices to include either earth berms or some type of a wooden shield between the air track and the property line. That has been discussed in great detail and at great length between the applicant's consultant and the Town's peer reviewer, and Mr. Stinson believes they are just about in agreement about what has to be done to achieve the DEP standard. He indicated that there is some supplemental information which needs to be brought forward to the Board.

Mr. Stinson continued his presentation by saying that the final issue to be discussed is that of hydrogeology. He noted that in phase 1, they propose to stay 5 feet above the ground water table as required by the Town's ordinance, which is a performance-based standard. Initially their plan was to monitor that as they got into construction, but it was pointed out that the ordinance does require a hydrogeologic study to demonstrate that that could be achieved. He said they elected to drill two bedrock wells as opposed to a paper study in order to have on-ground information. Mr. Stinson said they had hired the services of a certified geologist and introduced Don McFadden of MAI Environmental.

Mr. McFadden came to the podium and explained the study that he performed for the applicant in order to assist the applicant in obtaining a permit to go beyond the water table. Knowing that the project would go forward with below the water table excavation, he said he immediately met with Mark Stebbins, mining coordinator for DEP, to determine where the long terms groundwater monitoring wells should be. Based on that discussion, two wells have been located on site at approximately elevation 100 feet above mean sea level, and another one at approximately elevation 124. He said that both wells were picked with Mr. Stebbins' assistance based on knowing that they would be used as down graded monitoring wells in the future, but they are also to be utilized to determine what the water table level is now. The wells are drilled approximately 10 feet below the base of the proposed phase 3. The wells were checked in June and October of this year, and water elevations ranged between 94.01 feet and 102.3 feet, well below the proposed 114 feet of the base of phase 1. He said that he feels relatively confident that Shaw Brothers will remain at 5 feet above the water table. As clarification, he said there is not a true water table in phase 1 based on test pits that he observed, there is about 5 feet of overburden on the highest part of the property, and it is overburden to bedrock with no sign of groundwater. He noted that this is a bedrock aquifer, not an overburden aquifer. Mr. McFadden reiterated that before Shaw Brothers can go into the groundwater under the DEP requirements, they must undergo a lengthy hydrogeologic assessment, more extensive than what has been done to date. They will have to do a year's worth of background water table elevation monitoring, a year's worth of groundwater quality monitoring, and will also have to assess draw down, based on the quarry pumping groundwater.

Mr. Stinson said that their presentation is now complete, and they understand that there is some supplemental information they need to submit. They have also reviewed staff's agenda memo and either have that information developed or are very close to having that done so they hope to be back fairly quickly before the Board. He said there is one area in particular which they would like the Board to consider, and that is the issue of providing detailed information about buildings on the site. As he has stated several times, they do not know the configuration of the portable asphalt plant that will be on site, and while they can make some predictions, they do not want to move a piece of equipment in and have the Board say that it is not what they were told would be on site. He said they can show the Board pictures, but they do not want to commit to specific dimensions of a portable plant. They will commit when they come in for a permanent plant.

Ms. Robie asked for Board input as to whether the 10:00 o'clock rule is to be extended, and, if so, for how long. She said "What we hope to achieve this evening is to provide guidance to the applicant as to the critical path information that is needed to proceed with the application. One of the first issues the board must deal with is the request for the reduction in the buffer from 200 feet to 100 feet. There are three questions that have to be answered. I intent to poll the board on each question as to whether there is enough information in the submission to proceed on each question. If the board wishes it may vote on the buffer reduction at this time, it may choose to postpone the vote, it may also chose to have a workshop on this one item. If time permits the board may be able to identify further critical path issues for the applicant." Mr. Stelmack suggested that after the public comment period of one hour is completed, the Board take another half hour to 10:30 to hear staff comments and give the applicant general direction on what additional information the Board members want to have. The Board concurred that it would close its discussions at 10:30.

Stretch Break to 8:50 p.m.

PUBLIC COMMENT OPENED:

Deborah Cassidy, 6 Timber Ridge, introduced John Rand, JBR Consulting Hydrogeologist, retained by Concerned Citizens of Gorham. Mr. Rand said he is concerned about three sections in the Code where he believes the application does not provide enough information to meet the ordinance: Chapter II, General Standards of Performance, C. Mineral Exploration, Excavation and Gravel Pits, 1) Purpose, 4) Application for New Pit Operations and 5) Operational Requirements (pp. 98, 102, 106). His specific concerns are: (1) the site plan needs to show the depth to groundwater at the site of the proposed excavation. He said that the material submitted shows well locations but no depth to groundwater information on the site plan; (2) there is no hydro geological study showing the depth of ground water throughout the site and establishing that the operation will not cause any pollution to ground water and/or surface water; (3) the excavation shall not go below 5 feet from the seasonal high water table. The two wells installed provide a good start on understanding the depth to ground water. He said that the June study reported depths to water-bearing fractures but no water elevations, no depths down below the ground surface to the water. He said what was heard tonight was that the water was between 5 and 18 feet or so below ground at those wells, which seems about right with what was measured at neighboring wells where the water was 5 feet below the ground to the north of the site and 17 feet below ground south of the site. He said that the applicant needs to provide a minimum of three additional monitoring wells, on the north, south and west sides of the site to meet the standard of performance that a depth of water throughout the site has been demonstrated. The two locations provided so far are helpful and are well located for future monitoring, but they don't surround the perimeter of the site and say nothing about how deep the ground water may be up on the hill that is going to be quarried. He said what they have measured and what he has measured has been basically the same waters approximately 5 to 18 feet below ground and in his opinion, that condition likely exists throughout the site, so that at the top of the hill at elevation 216 water might be down at 200 or 180. He said that it is known from groundwater studies throughout the state that the water table, even in the bedrock, generally follows

topography in a more subtle way than the actual shape of hills, but if there is a hill that goes up to elevation 216, we can have reasonable confidence that the ground water table in the bedrock is probably within 20 to 25, maybe 40 feet, of the ground surface. He said that for a relatively modest investment, the applicant could directly meet the performance standards of the Gorham ordinance by having three additional wells that would give not only the Board but the applicant, his consultants and the neighbors the confidence of knowing where the water table is in order to not mine down into it and specifically to stay five feet above it until such time as the applicant is ready to mine down into it. He said that while DEP standards call for water quality monitoring through time, there is value again for all parties in doing that before hand in a limited way than after, especially as it would help determine if a condition present in a neighboring well was site related or present already. Mr. Rand said that what has been done is not sufficient to meet the ordinance, and the level of effort necessary to install a network to meet the ordinance would not be a significant burden on the project.

Bob Frazier, 4 Aspen Lane: Expressed concern about proximity of Presumpscot River as ultimate destination of stormwater; prevailing winds will blow pollutants into the river; global warming impact with heat produced by asphalt plant.

Rebecca Lorello, 51 Gateway Commons Drive. Expressed concern about health issues caused by exposure to fine particulates and how odors can travel.

Mark Barnes, 4 Flaggy Meadow Road. Said he is a Shaw Brothers employee concerned about personal attacks on Shaw Brothers as unfair and unfounded.

Gary Noyce, 39 Dolloff Road. Speaking on behalf of him and Mr. and Mrs. Donald Dolloff. Said he is concerned about his well, which is within 1000 feet of the site, sound issues, future impact of asphalt plant.

Mary Fagerson, 30 Ridgefield Drive. Spoke about health impact issues due to exposure to fine particulates; buffers should not be reduced, exposure to noise can cause health problems. Deny application due to its inadequacies.

Allene Bowler, 190 Mosher Road. Noted that a third lane on Route 237 should be required as was required in other applications.

Theresa Dolan, 309 Mosher Road. Indicated concern about the disturbance to her family's lifestyle that will be created by blasting; time limitations on rock and stone crushing; and discussed restrictions that could be imposed by Planning Board. Will lose quality of life if hours of operation are permitted to be 24 by 7. Requests a second site walk due to proposed change in location of asphalt plant.

Russell Sprague, 184 Libby Avenue. Expressed concern about odors from traffic and the asphalt plant, potential disturbing impact from lighting. If approved, buffers should not be reduced, there should be no 24 by 7 operation hours.

Tom Ellsworth, Gorham Economic Development Corporation. Said that the Shaw proposal fits the definition of what the Town and the Economic Development Corporation would like to accomplish in Gorham: the attracting of new business under current zoning regulations, creating job opportunities for Gorham residents, a contribution to the long-term industrial growth once the quarry is completed, a savings to the Town by expanding the number of asphalt sources, and the creation of significant tax revenue for the Town. While sympathetic to concerns of the abutters, Shaw Brothers is a valuable contributor to the local economy and the well-being of the Town of Gorham.

Mark Verrill, 488 Fort Hill Road. Spoke about the contributions that the Shaws have made to Gorham and to the community. Said that the people in the neighboring developments are new to Gorham and aren't aware

of how long this company has been around and what they have done for the community. He lives within ½ miles of 4 mining operations and doesn't have much noise.

Debra Sawyer, 145 Sebago Lake Road. Offered praise for Danny Shaw for his assistance when they had a serious home fire.

Jennifer Everett, 184 Libby Avenue. Said that the application is incomplete: No information has been provided about the asphalt plant; no information is provided about the number of annual blasts nor a detailed description of the patterns and timing of each blast; no reclamation plan information has been submitted; a wetland impact study was provided only for Phase 1 of the quarry operation, although there will be wetland impacts by Phase 3.

David Kent, 726 Fort Hill Road. Said that he is confident that Shaw Brothers has the interest, the willingness and the financial capability to put something forth that meets the ordinance.
PUBLIC COMMENT PERIOD ENDED.

Michael Parker MOVED and Edward Zelmanow SECONDED a motion to continue the public hearing. Motion CARRIED, 7 ayes. [9:00 p.m.]

Ms. Robie opened the discussion for staff comments and questions from Board members to those who spoke.

Ms. Fossum noted that staff comments can be confined to the review requirements under the Land Use Code and an overview of the additional information which staff has asked the applicant to provide. Ms. Robie suggested that first the Planning Board members ask questions of those who spoke tonight.

Mr. Fickett asked how many of the items in staff's memo of October 26, 2007, have been addressed. Ms. Fossum replied that staff is awaiting revisions to come back from the applicant. She said that in addition to the seven pages from staff, there were other staff comments provided to the applicant and there has not been enough time for the applicant to respond.

Mr. Parker asked if it is correct that for the first year or so there will be no aggregate coming from the quarry so the batch plant would be operating entirely on imported aggregate. Mr. Shaw said he anticipates that the quarry would be up and running first. Mr. Parker said that if there is such a period, then the number of trucks needs to be increased because it would not be just liquid asphalt coming into site, but would also include a lot of the aggregate that is planned to come from within. Mr. Shaw said that at the same time, there would be no aggregates from the quarry going out, so one would probably balance out the other.

Mark Stelmack: asked how the deficiency in the number of monitoring wells will be addressed. Mr. Stinson said there had been a meeting with DEP to talk about what DEP in this initial phase would consider satisfactory evidence and as a result, the wells were positioned where they were. He said that Gorham has a performance-based standard and the Board has allowed other operators to insert wells as they have developed their operations as opposed to doing it earlier. Mr. Stelmack asked how the applicant will address that portion of the Code that requires a section of the hydrogeo plan showing that no pollution will be caused, which is not yet in the applicant's package. Mr. Stelmack said that simple definitions of groundwater levels do not explain how your site will not cause pollution. Mr. Stinson replied that their charge is to stay 5 feet above the seasonal ground water elevation, they will not be dewatering or taking water out of that area which could have a potential impact on wells and they are above the ground water. He said there is a substantial ground water study that needs to be done before they can get into the ground water in Phase 2, and that all of the well testing and water quality testing has to be done. Mr. Stelmack said he is concerned that the plan for Phase 2 is not before the Board yet. Ms. Robie noted that she cannot remember a new quarry application

where the groundwater determination on the entire parcel was not made before approval. Mr. Stinson gave one example, but Ms. Fossum said that involved gravel formation which is different than a bedrock situation.

Ms. Robie said that it is up to this Board to say whether or not they want the hydrogeologic study as described in the Code done for this application. Mr. Shaw said that when they first started this project they asked if they could get approval on all three phases, hold off the groundwater study after the year's testing required by DEP. He said that DEP's senior geologist has approved the applicant going 5 feet above but will not approve going below the water table until there has been a year of testing. Ms. Robie reiterated that the ordinance is specific on this point as to what is required for the application. She replied to Mr. Shaw that it does not give how many wells per acre are required, but it does require a determination of ground water on the whole site. Ms. Robie said the Board should be polled for the choices available to it: to accept what the applicant has proposed, to accept the evidence presented by another hydrogeologist, to ask for a third party independent review as to whether what the applicant has proposed meets the requirements of the Gorham ordinance, and if the Gorham ordinance is stricter or requires more information than the state on this particular issue, then the Gorham ordinance prevails.

Mr. Hughes said this is a complex issue and asked what the down side is to accept the two wells already done with testing as they go on. Mr. Fickett said he believes that the limited requirements of Phase 1 are met but it is not enough to go on to Phase 2 or Phase 3. Mr. Shaw told Mr. Parker how monitoring is done as work progresses and said that within a year they can put in the 3rd well that DEP requires within the 12 months before they would be allowed to go below the water table. Mr. Shaw told Mr. Parker that they have to build the road before they get to the site of the 3rd well DEP would like to see.

Mr. Boyce said that the applicant continues to ask for approval on all 3 phases without the scientific information necessary to be generated at some future date to provide for DEP's or other state organizations' approval of the subsequent phases. He said it is dangerous to cut too many corners for Phase 1 if the Board is going to continue to be asked to approve the entire phased project in its full length. He said there are too many things that will play out over too long a period of time for the Board to predict with certainty what is going to happen. He said he believes that 3 wells would be a good place to start to affix the elevation of the ground water table or the direction of flow. If the state believes that the 2 existing wells are sufficient for Phase 1 operation, he is satisfied.

Mr. Zelmanow said he believed that the Code requires that monitoring be done throughout the site and as yet there has been no plan showing where the two monitoring wells are currently planned to be located. He said he would like to see the plans first showing where the wells are. He said that a third party reviewer is necessary to determine best management practice in this instance for monitoring throughout the site and the number of wells that would be required for best management.

Mr. Stelmack said he is comfortable with the two monitoring wells proposed in Phase 1 and Phase 3 and the monitoring that will be done during operations to supplement that information. However, he is concerned that the applicant is asking the Board to approve all 3 phases but the Board will not be able to see Phase 2's hydrogeo study for another 12 to 18 months. He asked if the Planning Board could approve all three phases with a condition that prior to any excavation in Phase 2 the Board is allowed to see the Phase 2 hydrogeo study and approve it. Ms. Robie said that the Board can put in a Condition of Approval requiring the applicant to return to the Board with a hydrogeologic study prior to commencement of Phase 2.

Ms. Robie summarized that the majority of the Board is satisfied with the two current wells and would like to see their location and the proposed 3rd well on the plan. The Board indicated its concurrence with Ms. Robie's summation.

Ms. Robie indicated that the Board still needs to address the issue of water quality and pre-construction well surveys. As was suggested during the public comment period, the Board agreed that there should be a

second site walk to see the current location of the asphalt plant, and Ms. Robie suggested that the applicant mark the storm water ponds, the roads, the boundaries of the asphalt lot and the location of the berms.

Mr. Fickett discussed with Mr. Stinson the question of the lifetime expectancy of the treatment ponds. Ms. Robie noted that the Town Engineer has asked for calculations for a 100-year event; Mr. Stinson said he believes it is only for one culvert. Mr. Stinson said if it is the wishes of the Board, they will do it. Mr. Hughes asked if the concerns of the Portland Water District have been addressed. Ms. Fossum said that the applicant's September submission addresses those comments but it is not known if that is acceptable to the Water District. Mr. Stelmack asked if the noise peer review consultant has received the information he requires and if that issue needs to be more closely reviewed by the Board. Mr. Stinson said they are closing in fast on that issue.

Ms. Robie told the applicant that the Board will not be able to respond completely to the applicant's application and the presentations made this evening. She then asked for staff comments.

Ms. Fossum said that this application is subject to two separate reviews. The asphalt plant itself will be reviewed under the site plan review standards, the quarry will be reviewed under the mineral extraction ordinance and each of these sections of the Code directs the Board to look at other sections. There are 5 areas where the applicant is looking for approvals or exemptions or variations which are permitted by the Land Use and Development Code, subject to the applicant demonstrating that certain requirements have been met, which are

- (1) a requested reduction in the required buffer from 200 feet to 100 feet on several sides of the quarry project, subject to the Board's determination that specific standards are met by the applicant with respect to noise, dust and visual impact;
- (2) a requested reduction in the required buffer from 200 feet to 10 feet along the property line with the LaChance Brickyard, which would allow an exemption from the noise limits under the ordinances per agreement between abutting owners and subject to the requirement for reciprocal deeds language which needs to be submitted for review with by the Town Attorney;
- (3) a variance from the standards to allow additional hours of operation proposed for the mineral extraction operation located within 100 feet of the property line with the asphalt plant;
- (4) an agreement between the applicant and LaChance Brickyard that the noise limits may exceed the 75 decibel limit per the provisions under noise ordinance and again subject to the requirement for reciprocal deeds; and
- (5) approval of plans for an oversized sign for both the quarry and a separate one for the batch plant.

Ms. Fossum said, as had been stated earlier, that the applicant did request tonight's public hearing even though they were advised through their representative that staff's review of the plan would not be complete and it was anticipated that the application submissions were not complete. A review memo was provided to the applicant on October 26, 2007, which listed a number of areas where the application is deficient or where additional information would be required by our staff reviewers and by the Town's third party or outside reviewers. Ms. Fossum noted areas where additional information is required as follows:

- (1) plans detailing proposed offsite improvements on Mosher Road;
- (2) a photometric plan for the site;
- (3) a letter from the Maine DEP stating that the asphalt plant and the quarry are subject to Common Scheme of Development and therefore subject to a Site Location of Development Permit; and

(4) the applicant's spill prevention control and countermeasure plan.

Mr. Stinson commented they had asked for the public hearing knowing that they would not be able to respond to the October 26 memo but feeling that the exchange tonight would be helpful to them. Ms. Robie asked Mr. Stinson about the status of the letter from DEP about Common Scheme of Development. He replied that their request for the letter is being reviewed with the Land Bureau, the Mining Coordinator and the Attorney General's office.

5. SCHEDULE OPTIONAL MEETING IF NEEDED.

Ms. Robie proposed that a second meeting be scheduled in November and the Board continue to review the material that has been presented and any other material that comes in, with the objective of reviewing Special Exception criteria for the quarry and then the buffer reduction requests, as they address how the plans will be drawn in the next submission. The Board discussed workshop, site walk and meeting options, with the following dates established:

Workshop scheduled for Thursday, November 15, 2007, 6:00 p.m. to 9:00 p.m.

Site Walk scheduled for Sunday, November 18, 2007

Meeting scheduled for Monday, November 19, 2007, at 7:00 p.m.

6. ADJOURNMENT.

Michael Parker MOVED and Douglas Boyce SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [10:45 p.m.]

Respectfully submitted,

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

A. FINAL SUBDIVISION PLAN – “THE CROSSING SUBDIVISION” / “OLD DYNAMITE WAY” / “HIDDEN BROOK DRIVE”– off GRAY ROAD – by MJF DEVELOPMENT GROUP, LLC, MICHAEL J. FERRANTE, MEMBER

**Approved
Conditions of Approval**

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for de minimis changes which the Director of Planning may approve;
2. That the applicant is responsible for obtaining all local, state and federal permits required for the development of this project;
3. That prior to the commencement of any site improvements and/or earth-moving activities associated within the approved subdivision, the applicant shall arrange for a pre-construction meeting with the Planning Staff, Public Works Director, Fire Chief, Code Enforcement Officer, Town’s Inspecting Engineer, Site Contractor, Design Engineer and himself to review the proposed schedule of improvements, conditions of approval, and site construction requirements;
4. That 3 (three) complete sets of the final approved plan set will be delivered to (1) the Inspecting Engineer, (2) Public Works Director, and (3) Director of Planning one week prior to the pre-construction meeting;
5. That the applicant shall create a homeowners association or other legal entity acceptable to the Town and shall submit the association documents or declaration creating the association or other legal entity in a form acceptable to the Town Attorney. The documents or declaration shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair, and plowing of all streets within the subdivision, and shall state that the homeowners association and/or the lot owners shall be responsible for all costs related to the street. The applicant shall be responsible for recording the approved documents in the Cumberland County Registry of Deeds within 90 days of the date of approval of the subdivision by the Planning Board;
6. That the applicant shall provide property line information and site information, including each sheet of the final approved set of plans for the project, in auto-cad format (version 2000) to the Planning Office prior to the scheduled pre-construction meeting and upon completion of the project shall also provide the final record drawings in auto-cad format to the Public Works Department;
7. That prior to any occupancy within the subdivision a structure shall be properly numbered with the number visible from the street year round;
8. That the Police and Fire Chiefs shall approve the street name. The road will be properly named and signed with a Town approved street sign and installed in a location approved by the Police and Fire Chiefs as soon as the road is constructed;
9. That the applicant shall satisfy all of the Fire Chief’s requirements as outlined in his memo to the Town Planner, dated December 11, 2006;
10. That the applicant’s engineer shall certify that the streets or ways have been constructed in accordance with the specifications of the Town of Gorham’s Land Use and Development Code and in accordance

with the plans and specifications approved by the Planning Board. Furthermore the applicant's engineer will be responsible for providing record drawings accurately reflecting these improvements as required by the Code; and

11. That these conditions of approval and the Final Plan shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board's endorsement of the final plan, and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to construction.
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C. SUBDIVISION AMENDMENT - DOUGLAS KNOLL" / "MARYANN DRIVE" – off WATERHOUSE ROAD & SOUTH STREET – by DESIGN DWELLINGS, INC.

**Approved
Conditions of Approval**

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for de minimus changes which the Director of Planning may approve;
2. That all other applicable conditions of approval attached to the original site plan shall remain fully in effect; and
3. That the conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board's endorsement of the final plan, and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to the issuance of any building permits or commencement of any improvements on the site.