



**Town of Gorham
November 19, 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
NATALIE BURNS, Esq., Town Attorney**

Staff Absent:

Barbara Skinner, Clerk of the Board

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

1. APPROVAL OF THE MINUTES FROM NOVEMBER 5, 2007 MEETING.

Michael Parker MOVED and Edward Zelmanow SECONDED a motion to postpone approval of the November 5, 2007, meeting. Motion CARRIED, 7 ayes.

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 must wait until the Town Council is seated before scheduling a meeting to have a workshop.

Private Way Sub-Committee – No report.

3. 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.

Ms. Robie noted that this item is advertised as a continuation of a Public Hearing for the Brickyard quarry and the asphalt plant application.

She said that on Thursday November 15 the Planning Board held a workshop on this application and on Sunday November 18 a site walk was held of the asphalt plant site as this site was changed from the original layout.

Ms. Robie stated that tonight the Board will continue the format of the workshop held on the 15^h, in that the Board will continue to determine whether or not it has enough information to make the decisions it is required to make on these application and to ask questions of the applicant and hear additional information from the applicant when they so desire. This will involve discussion among the Planning Board, staff and the applicant. The Board has a list of issues that it is following, which is public information.

Ms. Robie announced that at 9:30 the Board will take public comment for ½ hour. This public comment should be confined to the specific issues that the Board is discussing or which have been mentioned, and she said she would summarize what was discussed on Thursday night. She said that what will happen after that depends upon how many issues the Board succeeds in completing. She said that the Board will have to continue to meet until these topics and any others that are added are complete. She said that once the Board completes these discussions, the applicant will make a revised submission to the Planning Office. This submission should contain responses to peer review comments, issues raised by town staff in both the Planning Review Memo dated October 26 and the agenda memo dated November 5, and should contain responses to the issues raised by the Planning Board. When this revised submission is received the town staff will review it, and the peer reviewers will be asked to comment on the revisions made in addressing each of their specific concerns. That review process is usually turned around in 6 to 8 weeks. This is a complicated application. When that is finished, these applications should be close to final form, and when it returns to the Planning Board it will be as the final public hearing. The only public hearing is usually held when the Board has a finalized application in hand. Public comment will be taken for much longer periods of time at that time.

What follows is a brief summary of the information that was requested of or offered by the applicant at the Board's workshop on Thursday November 15. No votes were taken at this workshop meeting; all final decisions must be made in an official Planning Board meeting.

Ms. Robie said that what she is going to read is not final because the meeting tapes have not yet been transcribed and asked that any mistakes she may make in my notes be corrected by either the applicant or other Planning Board members.

Ms. Robie said that the Board discussed the hydrogeological study, and she believes that the applicant agreed to locate three wells, two of which are already existing, for groundwater monitoring on the site plan. She said the applicant told the Board of its plans for testing on all neighboring wells whose owners give permission. The applicant provided the Board with a map and a list of people to whom they are sending letters asking for permission to do testing. The Planning Board asked that this testing be done pre-construction so as to serve as a baseline. She said she does not believe the distance that is being encompassed was identified, and said that the map that was provided should be part of the application packet. Ms. Robie noted that there was a second letter from Mr. Rand, a hydrogeologist hired by the Concerned Citizens of Gorham that was discussed. She said there will be a condition of approval regarding the receipt of the Maine DEP's variance on mining below the water table, and said she believes the Board agreed that upon receipt it will be provided to the Town Planner for inclusion in the Project Record and the Planner's review of compliance with the Gorham Code.

The other Board members had no comments or corrections to the above.

Ms. Robie said that the next issue considered by the Board at the November 15 workshop was whether the Board has enough information to vote on the applicant's request for buffer reductions. She said that the Board asked for a view shed rendering of the north boundary line from a vantage point on Queen Street be prepared. She said that applicant's engineer agreed to provide this rendering during the site walk on Sunday November 18. The applicant said he will confine the area of the quarry to 15 open acres where the overburden will be removed in preparation for drilling. The applicant will provide a site drawing showing the Maine DEP noise requirements, not measurements, for both day and night on the property lines of the site and the distance along the boundary where the limits apply. This drawing, which is partially complete, also shows the location of and distances to protected locations. The applicant will provide answers to all of the 11 peer review questions on noise, and in fact an in depth discussion of noise was not pursued because the questions were not answered at the time of the discussion. She said there was some discussion on rock crushing and Saturday rock crushing was discussed as if it was a possibility.

A review of the Code shows that rock crushing is not permitted on Saturday. The applicant stated he is not inclined to voluntarily undertake any dust monitoring at the property lines. The Board tried to make provisions for Mr. Stelmack, who had talked about it earlier, to be able to comment if he wishes during this meeting. The applicant said they will pave at least 500 feet of roads, the specific areas need to be identified on the plan. She said there has been a request that they pave off the roads so that is a yet-to-be-determined response. Discussion of best management practices for dust control resulted in the Town Planner's office asking DeLuca Hoffman to look at Mr. Hayward's Review. The applicant stated that rock drilling will not be considered a construction activity for this quarry and the noise of rock drilling will be mitigated to meet the Maine DEP noise requirements at the property lines. This will have to be a condition of approval.

She said that the Board talked about stormwater, and the applicant agreed to perform the storm water calculations asked for by the Gorham Town Engineer and answer the questions he posed.

Mr. Stelmack commented that with regard to the dust monitoring, at the time he had introduced that concept, there was some concern among the residents about silica dust. He said that if the applicant promises it will enact best management practices he will not be any more concerned about dust at this quarry any more than at any other pit in Town. He said that this was something the applicant could consider to do to appease the abutters, but he did not propose it as a condition, it was simply a suggestion.

Ms. Fossum noted that the applicant has indicated that indicated they will follow the standard best management practices in a number of instances and reiterated that it would be important to have any of the best management practices referred to in the operations manual actually copied in full and included in the manual for the benefit of Town Engineer and the Planning Board's review.

Ms. Robie said that the Board's discussion in the November 15, 2007, workshop had ended with Item 7 in the discussion review memo, "Traffic." She noted that this item should be discussed in connection with both the quarry and the asphalt applications.

"7.*Traffic-

- a. Plans for shoulder widening have to be provided, how do they intersect with the stream protection issues and the culvert questions?
- b. Will truck traffic be allowed on Queen Street?
- c. What is the interaction with the Grondin Commercial Subdivision regarding the warrant for turning lanes? In the past the Planning Board has required turning lanes where State Warrants have not applied. What is the view of the board regarding turning lanes?"

Mr. Parker said he believes that there have been changes made for increasing the shoulder width on both sides of the road that the Board has not seen yet, and he suggested that the subject be postponed until the Board has seen those plans and can assess how the traffic would be facilitated by that change. Mr. Boyce asked if the Town's traffic peer review engineer has seen the traffic movement permit and the plans that have been developed at this point for the road widening of Route 237, and are there current comments available from the traffic peer review engineer. Ms. Fossum replied that current comments from the traffic review engineer were attached to the October 26, 2007 Planning review memo that was sent to the applicant, and yes, the review engineer has seen the permit, as well as the traffic permit and plans for the Olde Canal Business Park, across Route 237 from the applicant's site, and therefore understands the potential interaction between the two projects at some in the future. Mr. Hughes noted that 8-foot shoulders had been discussed at the sitewalk. Mr. Stinson replied to a query from Mr. Hughes that they were not required to get a traffic movement permit from DOT, they received an entrance permit, and as part of that permit, as well as coming up in the peer review letter, was the issue of the 8-foot shoulders. Mr. Stinson said they are obligated to build those shoulders, which they will do in full-depth construction, digging out what is there, going in with full depth of gravel to be a good cross section. He said those

plans have not yet been submitted, but they are completed and will be included with the next submittal, but they also have to be approved by DOT. Ms. Fossum noted that the peer review engineer has pointed out that if at some time in the future the developer of the Olde Canal Business Park extends its required turning lane, there will have to be some readjustment with this project. Mr. Fickett asked if the shoulder work is going to be done as soon as the project starts. Mr. Stinson said that typically DOT's conditions of the entrance permit will require that being done before it goes into full operation.

Ms. Robie said that early on in the project's review there was a question about whether truck traffic on Queen Street could or should be permitted. Mr. Stelmack asked if truck traffic is currently restricted at all, and has the applicant been asked that question. Mr. Shaw said there will be no entrances on to Queen Street and they would have no problem if the Town closes Queen Street to trucks.

The Board then discussed Item 8, "*Control of Access to the Site," which was meant to include both access from a public road and access from surrounding property, authorized or unauthorized. Mr. Hughes said this was one of his concerns from the very beginning, relative to the top of the quarry, where there would be a fairly steep dropoff. He said he does not know if there is any ordinance requirements for fences, and asked the applicant if he has considered that. Mr. Stinson said that the plans right now show gates at the driveways, and the next submittal they make will show a four-foot wire mesh fence around the entire excavation area, which is consistent along the turnpike at the right-of-way line. Mr. Shaw described the proposed fencing in answer to a question from Mr. Stelmack and said if there were a snowmobile trail they would make the fence very visible, but otherwise it would just blend in. Ms. Robie asked Mr. Stinson for clarification of the wording "entire excavation area;" Mr. Stinson replied he meant the quarry. Mr. Parker said he would be satisfied with the erection of a four-foot wire fence as a safety measure.

Mr. Stelmack asked staff if there is a requirement for fencing in a quarry operation. Ms. Burns replied that the specific language about the Board having the authority to require fencing or signage or fencing and signage is on page 105 of the Code, a September 2007 amendment, which states: "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." Mr. Stelmack concurred with Mr. Parker that a four-foot fence would be adequate. Mr. Boyce said he has seen gravel pits that used the bright orange construction safety fencing as a means of identifying the perimeter of the excavation and said it would be appropriate to have something around the general perimeter of the operating part of this facility through the duration of its operation so that someone inside the perimeter would know if they are coming up to a significant dropoff. Mr. Shaw said it is very visible but hard to maintain and is good only for a temporary measure, but what they are proposing to do is go around phase 1 at the limits of excavation, which would be about 15 acres at a time. In reply to Mr. Parker, Mr. Shaw said the fence would be outside the berm, and the berm is moved as they clear.

Ms. Robie said she concurs with Mr. Boyce that the perimeter fence could be 500 feet from where the quarry starts and it wouldn't be apparent what the fence is for or what the danger is from that distance, but one way to address that is with signage along the fence. Mr. Shaw said that if the Board wants a moving fence, they will do a moving fence, that they are offering to do it around the entire perimeter and it would be cheaper to do it only where they are blasting, but they don't want to have to move the fence with each blast to put it at the edge. Mr. Shaw pointed out that they will always be working "inside the rim," with phase 1 starting with a shallow lift of 40 feet, then going to a second lift.

Mr. Hughes said his preference is to have the entire perimeter fenced rather than moving the fence. Mr. Boyce said that with Mr. Shaw's description of how the berm will be advanced to encircle the area of excavation, he is satisfied that will provide the notification for people on the property and is fine with a perimeter fence with some signs. Mr. Parker said that signs notifying of a quarry and blasting should emphasize the perimeter fence to satisfy safety requirements. Mr. Zelmanow said he agrees, so long as

the fence is inspected periodically to ensure its stability. Mr. Stelmack said this will address the casual trespasser as opposed to the determined trespasser, who will get through anything put up to deter him, and the Board will have done its job with a four-foot perimeter fence. Mr. Shaw said he is willing to put up some warning signs.

Ms. Robie then introduced the next item, "Blasting," specifically related to the quarry application. She said that page 109 of the Code directs the Board to make specific findings regarding blasting. She asked if the Board feels it has enough information to make such findings. She quoted from the Code as follows:

"In order for the Planning Board to grant a license to blast, it must make specific findings that the operator has met its burden and established the following:

- (1) That blasting is essential to the economic viability of the operation;
- (2) That blasting will be conducted in a manner which will cause no damage nor unreasonable disturbance to surrounding properties;
- (3) That all blasts will be comprehensively monitored;
- (4) That there is adequate insurance to protect against any damage which may result from the blasting activity."

Mr. Stelmack asked how Item 4 above has been established in the past. Ms. Fossum replied that the applicant indicates in the application who they will provide such insurance with, and in the past a condition of approval has required certification of the blaster's liability insurance on an annual basis in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur, and the Town is named as an additional insured and the Town notified at least 15 days in advance if the policy if the insurance policy lapses. The insurance is reviewed by the Town Attorney as well.

Mr. Stelmack said that under the circumstances, Item 4 does not need to be discussed this evening. Ms. Robie said that Item 1 is obvious and needs no discussion. At Ms. Robie's request, Ms. Fossum read the following conditions of approval from another quarry application as follows: "That prior to the first blast, a pre-blast survey of all wells within 2000 feet of the blast area to be conducted to establish a base line against which any claims of adverse damage can be judged;" "That with the first blast the operator and its blasting subcontractor shall perform (or at least offer to perform) both pre-blast and post-blast inspections with photographs or videotape of all abutting properties within 2000 feet of the center of quarry;" "That the operator and its blasting subcontractor shall perform (or at least offer to perform) an annual survey to include seismograph and pictures on properties directly abutting the quarry and any additional properties with structures within 500 feet of the current blast site, to include seismograph and video or photographic record." She said that condition was in recognition that over time as the quarry was worked, the current blast site would move. Mr. Shaw said they do that now on all of their quarries.

Mr. Parker asked the applicant to run through the blasting plan. Mr. Shaw said that the DEP has expanded the pre-blast area to a half mile and he has offered to check wells within more than a half mile. Mr. Stinson described the state's blasting requirements and said they will meet DEP's standards for particle velocity and vibrations. He said the pre-blast survey will be performed within a half-mile of a blast site, wherever that comes, where the insurance company photographs foundations.

Ms. Fossum said that conditions of approval will have to be crafted to reflect what has been proposed by the applicant and what is acceptable to the Board.

Mr. Zelmanow asked how "unreasonable disturbance" in item 2 above has been interpreted, which he believes extends more to people and animals and not the physical aspects of the property. Ms. Burns replied that 2 is tied to properties, both damage and unreasonable disturbance, and does not believe that it is a personal standard and that all the standards are meant to be objective, so that the applicant has to

provide information enough so that the Board can determine, not if there will be disturbance, but if there will be “unreasonable” disturbance. She said that the blasting plan should have information about minimal intervals between blasting, how often blasting will occur, which is information that the Board will need to review. Mr. Stelmack said that he believes that the Board will hear more along the lines of personal disturbance from the abutters, and the Board needs to be ready to deal with them. Mr. Stinson said he believes that the state has considered that issue in creating its blasting standards to achieve reasonable standards, and the blasting plan indicates that the DEP standards will be complied with. He said that a condition that they will put seismographs on any building within 500 feet of the property will insure that the state standards are met, and all abutters will be notified in advance of blasts so that they are not taken by surprise. Mr. Shaw said that notification is done an hour or two before a blast, that it is only one per day, and the time is within a couple of minutes. He said a production shot will last a couple of weeks in the summertime.

Mr. Shaw explained how vibrations are impacted by weather and cloud cover.

Ms. Robie asked if the applicant is prepared to comply with the requirements of 7(c) in the Code referring to the fact that the application shall include a site plan showing the limits of blasting, and a statement on the number of times that blasting will occur on an annual basis. Mr. Shaw confirmed that the maximum number of times is what is being asked for and their plan says “as often as necessary.” He said if a number is required, they will make it high, like 50, so that the market restricts them rather than having to make larger and fewer lifts. Ms. Fossum said that the Planning office is on the call list for the H Pit and the Brandy Brook Quarry, and in 2006 there were notifications of 16 blasts for the Brandy Brook Quarry. On the H Pit, there were 11 blast notifications so far for 2007.

Mr. Stelmack said if he were an abutter, he would rather have more at a smaller intensity, which he believes would happen if the number per year is raised. Mr. Parker agreed.

Mr. Shaw said they have an agreement with the Portland Water District which will be included in the next submission, that when blasting begins, a seismograph will be set up for the first 5 shots, when they get within 1250 feet, another seismograph will be set up, another at 1000 feet. and when they are at 800 feet they are to do it 5 times, and thereafter every 100 feet 5 times. Mr. Shaw said there will no restriction as to access, that the Water District has a right of way across the applicant’s land where the line is, which is shown on the applicant’s plan, from Queen Street to Route 25. Mr. Shaw said that if there is a noticeable vibration on the water main, there is language agreeing to an acoustic test to see how much it is leaking now to get a background, and after so many blasts, the test will be done again to see if worsening of the leaks can be attributed to blasting, with an insurance policy to cover that. Mr. Shaw said their revised submission will include a letter of agreement signed by the Portland Water District.

The Board then discussed Item 10 on the review memo, dealing with stormwater. Ms. Robie referred to the workshop on November 15 when the Board and the applicant discussed the Town Engineer’s requests and those of the peer review engineer. Mr. Parker expressed concerns about the bottom-draining sedimentation ponds to deal with sediment and how to deal with stormwater runoff of the asphalt plant containing chemicals and petroleum products that do not get filtered out which has the potential to overflow without treatment. He referred to the recommendation in the Gerald Hayward report for a closed connection water/oil separator. Mr. Stinson said the spill prevention control and counter measures plan is designed to take care of what would happen in the event of a spill in the fuel tanks or the asphalt tank, that plan being patterned after the state’s guidelines. Mr. Stinson noted that the stormwater ponds are designed as treatment ponds and will be effective for the oils will float on top and be easily removed.

Mr. Stelmack asked how far water will travel from the pavement to the sedimentation pond, does it travel through a ditch for some period of time where it might get cleaned up. Mr. Stinson said there is a 250-foot grass swale between the asphalt plant and the stormwater ponds. Mr. Stelmack said he thinks that

this is a significant avenue for cleansing the stormwater runoff. He recommended that if the applicant can show that the state encourages grassed swales as a best management practice for pollution control of stormwater runoff, that might help the Board make a decision in that regard, and if there is a definition of what triggers the need for an oil/water separator, the applicant should show that it does not meet that definition. Mr. Shaw replied to Mr. Hughes that he does not believe Pike or F.R. Carroll has oil/water separators at their asphalt plants, that it is not part of DEP's requirements.

Mr. Parker said he would like to have the Town's peer review engineer review Mr. Hayward's recommendations on this point.

Ms. Robie asked if the applicant can demonstrate that it will adequately protect the watershed of Mosher Creek and the Presumpscot River from stormwater runoff, based on the Code's requirement stated in the Code at page 202 which states at F(6) "The biological and chemical properties of the receiving waters will not be degraded by the storm water runoff from the development site. The use of oil and grease of deicing salts and fertilizers may be required, especially where the development storm water discharges into a gravel aquifer or other water supply source." She said her concern deals with the proposed fish way and the anticipated salmon restoration project, and asked for assurances that the Creek and the River will be adequately protected in the future. Mr. Stinson replied that they are required by both the Town and the DEP to maintain maximum discharge from this site to pre-development conditions, so they know they will not increase the rate of discharge flowing to the River, and in fact, they will actually be decreasing it as the land is flattened during blasting. He said that the detention ponds and the stormwater management system will detain the discharge rate even more, and increased velocity and rate of runoff will not be an issue. Mr. Stinson said that the applicant is also required to do periodic cleanout of the ponds when the volume of the ponds increases by 25%, visual quarterly examination of the discharge must be done at the outfall during rainfall events, and sampling and monitoring of the outflow must be done according to the protocols.

Ms. Robie asked if the ponds are designed to overflow above a 25-year event. Mr. Stinson replied that each pond has an emergency spillway, designed to relieve the pressure of unusually heavy storms; otherwise the berm could be washed out when the runoff overtopped the embankment, with the sediment being washed downstream. He said he believes the emergency spillways ensures that the whatever sediment is in the pond will stay in the pond, it is basically a low spot in the dam, so that as water starts to fill up if it exceeds the capacity of the pipe going out through the pond, it will flow through the low point in the dam. The sediment is down below that so the water flowing over the low spot will not take the water with it.

Ten Minute Stretch Break

Ms. Robie noted that the next topic in the review memo to be discussed by the Board, #10, was whether the quarry operation will be required to comply with modifications to the DEP codes and the Gorham Land Use and Development Code that occur over the next 50 years. She said this item had been discussed at the Board's workshop on, with the Town Attorney stating that it would depend on whether the codes are specifically applicable to quarries that are in existence.

Ms. Robie then introduced the issue of the wetland permit for phase 3, item 11 in the review memo, saying that the Planner's review for the November 5 meeting indicated that the wetland permit for phase 3 had to be applied for prior to approval of plans for any phase and asked the Planner to comment. Ms. Fossum said that the plans call for identification of wetlands on the site, including phase 3, and identification of all required state and/or federal permits, including, if applicable, DEP permits. She said that prior to giving final approval staff and the Board have waited to see the state permits, so based on

that it was requested that the application be submitted to the DEP and otherwise felt that the application was not complete.

Mr. Parker asked the applicant to identify where the wetlands are delineated and how they are handled in the application. Mr. Stinson pointed to the area on the plan where the phase 3 wetlands are located. Ms. Fossum confirmed with Mr. Stinson that those areas are not included in the permit with the state. He said they included the wetlands to build the asphalt plant and the roadways, and pointed out that the permit they received states that if construction is not started within two years, the permit lapses, they do not plan to start phase 3 in two years, so obviously there is no point in getting that permit at this time. He said they would like to go forward with a condition on the permit that before anything can be done in phase 3, they need to permit that impact. He said there may be a different regulatory climate when they get ready to start on phase 3, which could be to the Town's advantage, as the state could require much larger mitigation and compensation. Mr. Stinson told Ms. Robie that neither of the two wetlands are upland wetlands and do not require the 250 foot setback, that they are forested wetlands, and those which require the 250 foot setback are wetlands larger than 10 acres, which these are not. Mr. Stinson said they have stream crossing permits which were permitted as part of what has been done for the asphalt plant.

Mr. Hughes asked staff what the down side would be of placing a condition on phase 3 that the permit must be secured before work can begin. Ms. Fossum said that the proposal that is before the Board is not final and asked the applicant what permit would be applied for today if those wetlands were included. Mr. Shaw replied that the permit they will seek from DEP is basically for phase 2 to go below ground water, and they will need to apply for the wetland permits before starting phase 3. He said they want this to be an industrial park when it is done, and what they want to do in phase 3 is take the hill down and make it developable, not so much to get the ledge out. He said that phase 3 will not go below the ground water, it is to finish the project off and turn it into a new use. Mr. Shaw said that their original intent was to ask for approval of all three phases and make the second two subject to DEP approval, with the most important phase being phase 2. Mr. Shaw said that if they had to come back before phase 3 for the wetlands, he thought they could deal with that. Mr. Stinson replied to Ms. Fossum that those wetlands would be either Tier 2 or Tier 3.

Ms. Fossum confirmed with Mr. Stinson that all the permits are good for only 2 years so if a project has not started, new standards can be imposed if state law changes. He said this is not uncommon. Ms. Robie noted that where the Board has seen phased projects, the project has to come back before the Board for the phases that are not completely permitted. She said that the phase 2 excavation below the water table is specifically mentioned in the Code as something for which approval of the overall phase can be secured, but the permit has to come back to the Planner so it can be made part of the project record, the Board is not talking about holding up phase 2. Mr. Shaw said he had misunderstood. Ms. Fossum said that staff is not talking about holding up phase 2 as the approval can be conditioned because of the way the ordinance is structured, the question is whether the submission for phase 3 is complete.

Mr. Parker noted that the Board has discussed a condition of approval for making sure that the DEP permit for phase 2 gets into the public record, and it would appear that the same thing can be done concerning the DEP approval of wetland management in phase 3. Ms. Robie said that the ordinance is not specific that the Board can do that regarding wetland permits, the ordinance says that the applicant must have all applicable permits in hand. She noted that the Board did not commit to approving phase 1, phase 2 and phase 3, the applicant has applied for the Board to approve all 3. She said that the permit for the variance to go below the water table required for phase 2 is specifically mentioned in the ordinance as conditioned on the DEP, and the condition of approval is to make sure that permit comes back to the Town and isn't lost. The ordinance does not allow the Board to approve a project that does not have all its permits

Ms. Burns confirmed to Mr. Hughes that if the applicant has a permit in hand for phase 3, whether that permit might become invalid is irrelevant to the Board's consideration and the Board, if it so chose, could approve it should the application meet the standards. Mr. Parker said that understanding a wetland permit is in hand at the time the Board may approve a 3-phase operation, the fact that the permit will expire 48 years before it comes to that point will not be his reason to reject the project. Mr. Stelmack concurred, and said if the Board sees evidence of a permit in hand, even if it is going to expire in 2 years, that would be sufficient for him of the applicant's good faith and ability in wetlands management. Mr. Hughes said if the Board cannot approve the project without the applicant having the wetlands permit, even though it will expire in 2 years, then the answer is very clear.

Mr. Stinson read from the Code at page 103 as follows: "(8) identification of all required State and/or Federal permits, including, if applicable, a Department of Environmental Protection permit;" which he interprets to mean only identifying what permits are needed as opposed to actually have those permits in hand. Ms. Burns agreed that that is the correct answer for the quarry, an identification of the permits as opposed to actually having them in hand, but because of the amount of time that will elapse, she believes the Board's concern runs to having some way of having it either come back to the Board or having staff review the permit to make sure that everything remains consistent and that there be some public identification that the permit has been acquired at that point in time. She said that no, the applicant does not have to have that permit up front.

Mr. Hughes asked if Mr. Parker's suggestion of handling the phase 3 permit in the same way to phase 2 permit is handled would be permissible. Ms. Robie said it sounds like it would. Ms. Fossum said that the applicant needs to identify the type of permit that would be required for phase 3, which could be different from phase 1 and 2. A condition of approval would require that prior to starting phase 3, the applicant would have to come back to staff so that the permit could be reviewed to be sure it is compliant and would have to be on file and made a part of the record. Ms. Burns confirmed to Mr. Parker that if the applicant needs to come back for a wetlands permit, the Board would not have the right to deny phase 3. Ms. Burns noted that the Board will have to have sufficient information so that it can approve phase 3 under its own standards, its review of wetlands is independent of DEP's function, and that this is another issue the Board will have to look at as it goes through the more detailed submission to be received from the applicant.

Ms. Robie summarized that for the quarry, the applicant does not need to have the permits in hand, the permits must be identified, the Town Planner has said that they must identify what type of wetland permit would currently apply, and that there should be a condition of approval that requires prior to starting phase 3 the wetland permit be obtained and that a copy be sent to the appropriate person in the Town to make sure that the permit is compliant with Gorham's Code in existence at that time, and that it would then become part of the project record.

Concluding the discussion period for the evening, Ms. Robie then opened the public comment period, asking that comments be limited to the specific issues of the application and the items that the Board has been discussing.

PUBLIC COMMENT PERIOD OPENED:

John Norton, 85 Gateway Commons Drive, referred to testimony from the applicant's emissions expert, David Dixon, at the November 5, 2007, Planning Board meeting, asking if Mr. Dixon had said that prevailing winds at the site were from the northwest. He said that prevailing winds change during the year noting his weather-related experience as a captain in the merchant marine and on oil tankers, and asked for more information about the wind rose presented by Mr. Dixon. Mr. Stinson said it was his understanding that the wind rose showed an average prevailing wind throughout the year, there were times of the year when the wind would change, that the wind rose showed winds coming from the south to southwest and southeast, but the prevailing wind throughout the year was from the west to northwest.

Mr. Stelmack replied to Mr. Norton's question that he did not speak to whether or not monitoring was required, he made the suggestion that given public concern about dust, the applicant might consider instituting a modest air monitoring program. Mr. Norton said he would like to know about the prevailing wind and if there will be any further monitoring of airborne particulates.

Noah Miner, 32 Green Street, asked in regard to blasting if only the abutters are notified of public hearings during site plan reviews. Ms. Fossum replied it depends on what section of the ordinance is involved, but in most cases it is immediate abutters and for a quarry it would be within 500 feet. Mr. Miner asked if people within ½ mile will be monitored for blasting base line data, shouldn't they be notified about the public hearings as well. Ms. Fossum said she would take his suggestion under advisement. Mr. Miner also expressed concern about abutters whose residences are sitting on the same area where blasting will occur and asked how blasting is performed.

Mary Fagerson, 30 Ridgefield Drive, commented that Mr. Dixon had been asked by the Board in an earlier meeting to develop a seasonal wind rose, which apparently he has not provided. Ms. Fagerson quoted the requirement in the ordinance for a hydrogeological study to show the depth of ground water throughout the site, and quoted as well from the letter of John Rand, the hydrogeologist hired by the Concerned Citizens of Gorham. She quoted Mr. Rand's statements about the water levels of the two wells drilled on site, and that groundwater levels tend to follow the terrain so even at higher elevations where the quarry is proposed, the water level is likely to be less than 25 feet below the surface. Ms. Fagerson also quoted Mr. Rand's opinion about the type of equipment that could be used to drill wells and the directions of rock fractures and water flow. She asked that based on Mr. Rand's letter, the Board require full compliance of the ordinance prior to approval with the installation of 3 additional wells in or adjacent to phase 1 using his suggested equipment, and documentation that mining 70 to 100 below ground will not encounter bedrock groundwater. She also suggested that the Board secure documentation from the DEP mining coordinator that the applicant's hydrogeologist's report has been reviewed and approved.

Hans Hansen, spoke about his experience drilling wells and expressed his opinion that many of Mr. Rand's statements are hypothetical. He commended the Planning Board on the good job it is doing. He commented about dust, paving of aprons, fencing, berms, stormwater management, dangers of phosphate pollution, and salmon fishways.

Theresa Dolan, 309 Mosher Road, commented about the overwhelming aspects of this application and its long-range implications of the length of time involved in the project. She expressed concerns about potential truck traffic on Route 237 and asked for a speed limit reduction from 50 to 35 miles per hour, asking the Board for a condition of approval placing the requirement to do so on the applicant. She also expressed concern about dust mitigation and the use of spray bars, and asked if a requirement can be placed on when and how often dust mitigation can be performed. She said she has asked Mr. Shaw to use down lighting with low wattage bulbs. Ms. Dolan expressed concern with the 24 by 7 noise created by the asphalt plant, especially during the early morning hours. She spoke about the height of the silos and asked if there are vertical silos as opposed to horizontal.

Jessica Goldman, 120 Gateway Commons, noted that her property is approximately 500 feet from the boundary of the applicant's property, and expressed her concern that the asphalt plant will change the community and that she would prefer not to live to an industrial facility which she believes will hurt the town, property values and physical well-being. She confirmed that if her home is included in the pre-blast survey area, yearly surveys should be done, that Gateway Commons should be considered a quiet area with stricter noise requirements applied, and asked if air testing can be done now and while the plant is in process.

Ed Twilley, 111 Gateway Commons, said his house is the closest to the applicant's property line, expressed his concerns about noise, dust, toxins, smells, commended the Board on its review of the project, and said he hopes the Board can balance the health and well being of the citizens of Gorham with appropriate economic development. He indicated his specific concerns with the proximity of his property and the fencing proposed, saying that the 4-foot height is inadequate to deter curious children such as his 9 and 11 year olds. He also spoke about the potential of noise from trucks, specifically engine braking.

Jennifer Everett, 184 Libby Avenue, spoke of her concerns about air quality and unhealthful conditions and referred the Board to the specifications of the Clean Air Act, copies of which she supplied to the Board, and stated that air quality monitors should be installed around the perimeter of the project for its duration. She said that an asphalt plant operating 24 hours a day, 7 days a week, is an undue burden to place on abutters, whose quality of life would be destroyed. Ms. Everett said the Board needs to guarantee that all 3 phases of the project will meet the standards of approval, one of which is adequate visual screening, and a rendering needs to be provided of how phase 3 will look in response to that standard. She exhorted the Board to impose restrictions to make the project safer and to reduce the impact on the neighbors, or deny the application if the applicant cannot meet all of the standards.

David Kent, 726 Fort Hill Road, commented about restricting Saturday hours of operation and nighttime operations, saying that a business should not be handcuffed so as not to be able to compete. Mr. Kent said that the review of the application has taken too long. He disagreed with lowering the speed limit on Route 237. He said that those abutters who purchased homes adjacent to an industrial area did so of their own free will, and that the Town needs to continue sending a pro-business message.

Russell Sprague, 184 Libby Avenue, commented that winter snow pack could easily make a 4-foot fence a 1 or a 2-foot fence, and that it needs to be higher. He suggested that it would be advantageous for the Town to consult a geologist about vibration patterns on different veins of rock. Mr. Sprague also expressed concern about having a wetland impact for all phases. He said that it is very important that the applicant meets all of the standards as the standards are the only way the public can maintain their quality of life.

Ms. Fossum read into the record the following letter received by e-mail from Deborah Cassidy, 6 Timber Ridge Road, dated November 19, 2007:

“Dear Ms. Robie and Ms. Fossum:

Due to family obligations, I will be unable to attend the public hearing tonight for the Mosher Road proposed asphalt plant and quarry. However, there are three areas that I was going to address during the public hearing that are important issues for my family and neighbors so I would like to send them to you so that they are in your records.

First, Mr. Bodwell notes that there are other quiet areas some distance from Mosher Road where quiet area limits would apply but the applicant does not note where these are. He also notes that the western edge of the property is shown on the map with a 55 dbA rating for day and night but could have a 75 dbA limit. Gateway Commons is just beyond the Southwest border of the proposed quarry and any land in that vicinity I believe would have to qualify for stricter quiet area limits. As part of my job, I regularly record voice overs from my home and I don't have a home studio. **It is that quiet in Gateway Commons.** (Underscoring provided). The occasional UPS delivery truck or lawn mower are the only things that ever impact my recordings. I can walk my dog at 10 a.m. and it is virtually silent. I cannot image that land over the southern border by the Dollof's and southwestern border, by Gateway Commons, wouldn't qualify for quiet area noise standards, and I respectfully request that they be measured and qualified as such.

Second, the applicant notes in the September supplement that there is intent to put gates up to limit access to the proposed asphalt plant and quarry. Children will not be entering the quarry from the road. The majority of the children in the vicinity of the proposed location are over the southwest border of the property in Gateway Commons. Approximately 1000 or so feet through the woods will not deter children from the “attractive nuisance” that the quarry will be. If you remember from another meeting awhile back, Emily Peterson, a 10 year old, clearly stated that she’s a kid and she’d want to play there. But we’re talking about forty foot drops, initially, into a rock quarry, not a gravel pit. This is unsafe and so close to residences filled with children that it is negligent to even consider not fencing the entire perimeter of the location. I would go beyond just putting a fence around it and suggest that a 10 foot fence is not unreasonable with the quarry so close to suburban residential properties.

Finally, the applicant states that they will do a preblast survey of residences within a 1000 foot perimeter of the blast site. That would be fine for occasional construction blasting. But in this instances, it truly isn’t far enough. There are plenty of folks beyond that limit who are concerned the **repeated** (underscoring provided) blasting suggested for this location could affect their property. Preblast surveys should be conducted for a much larger perimeter, say up to 3000 feet or for those beyond the 1000 foot perimeter who request it.

Thank you for your diligence in reviewing this proposal and residents’ concerns.

Sincerely,

Deborah Cassidy
6 Timber Ridge Road
Gorham, ME 04038”

Michael Parker MOVED and Thomas Hughes SECONDED a motion to postpone the public hearing. Motion CARRIED, 7 ayes.

4. SCHEDULE OPTIONAL MEETING IF NEEDED.

The Board agreed that another workshop meeting should be scheduled for Monday, November 26, 2007, to complete discussion of the review memo begun on November 15, and the announcement of that meeting tonight will obviate the need for further public notice. It was decided that no public comment will be taken at the workshop on November 26, and the workshop will run from 6:00 p.m. to 9:00 p.m.

5. ADJOURNMENT

Michael Parker MOVED and Thomas Hughes SECONDED a motion to adjourn. Motion CARRIED, 7 ayes.

Respectfully submitted,

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