



**Town of Gorham**  
**March 17, 2008**  
**PLANNING BOARD MINUTES**

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

**Members Present:**

**SUSAN ROBIE, Chairwoman**  
**DOUGLAS BOYCE, Vice Chair**  
**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**  
**BARBARA C. SKINNER, Clerk of the Board**

The Chairwoman called the meeting to order at 6:08 p.m. and read the one-item Agenda. The Clerk called the roll, noting that all members were present. Mr. Hughes arrived at 6:15.

**1. MINERAL EXTRACTION/SITE PLAN – “BRICKYARD QUARRY” AND ASPHALT PLANT – off ROUTE 237/MOSHER ROAD – by SHAW BROTHERS CONSTRUCTION, INC. PUBLIC HEARING – (CONTINUED) –**

Request for approval of a Mineral Extraction Permit for the Brickyard Quarry, a proposed quarry operation on 125.5 acres +/-; zoned: Industrial/Suburban Residential; Map 31/Lots 12, 13, 14, & 15 and a revised Site Plan Application for a hot-mix bituminous asphalt batch plant; zoned Industrial; Map 31/Lot 15 for Shaw Brothers Construction, Inc., on land of S.B. Aggregates, LLC located on Route 237/Mosher Road.

Ms. Robie opened the meeting by thanking the public, the applicant and his engineers, the Town’s planning staff, the members of the Planning Board, and the Town Attorney for all of their efforts regarding this Agenda item. The decisions to be made are difficult ones and are not being made without deliberation and consideration. She said that the item consists of the two revised applications submitted by Shaw Brothers, which were both submitted on January 8, 2008. The Code Enforcement Officer ruled last year that these two uses are separate permitted uses in the Industrial District.

Ms. Robie said that the Town Council has recently modified the Land Use and Development Ordinance with respect to noise standards, mutual noise easements and the creation of a 100-foot zone in a quarry that may be used in the operation of an abutting industrial operation if the Planning Board determines that it meets the criteria of the ordinance. These revisions to the Code apply to these two applications.

Ms. Robie said that 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 Department of Environmental Protection 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 District in which it is located, and all of the performance standards of Chapter II of the Land Use and Development Code. It is subject to the Maine Department of Environmental Protection noise regulations (per Mr. Shaw’s letter) and the State of Maine’s DEP mining regulations, as the State of Maine considers an asphalt plant to be accessory to the quarrying operation irrespective of local considerations.

Ms. Robie noted that as she had stated earlier, this item has been advertised as a public hearing. This public hearing will invite public comment for two hours. The first order of business will be the presentation of the revisions to the plans by the applicant’s engineer, there will be a short period of time for the Planning Board to ask questions of the applicant for clarification, and then the public hearing will begin. Ms. Robie repeated

again that the applications are permitted uses in the zone in which they are to be 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. The Board is not allowed in its deliberations to exceed the requirements of the Code.

Ms. Robie then asked Walter Stinson of Sebago Technics, the applicant's engineer, to make his presentation.

Mr. Stinson introduced Dan Shaw, applicant, Chris Cloutier of Shaw Brothers, and Shawn Frank of Sebago Technics. Mr. Stinson commented on the printed chronology that had been prepared for the public's use, noting that the project started in August of 2006, that they have tried to listen to the Board and to the neighbors, and believe they have a better project as a result. Mr. Stinson gave an overview of the project and described the physical characteristics of the site. He said that phase 1 of the project involves a total acreage of approximately 40 acres to be mined; phase 2, an area of approximately 27 acres, involves mining below the ground water level, for which a DEP permit will be required; and phase 3 of the quarrying operation will be the last phase of the mining operation. He said there will be a hill that will hide much of the work going on in phases 1 and 2, and that will be removed on the completion of phases 1 and 2. Mr. Stinson pointed out the proposed location of the asphalt plant, which will occupy approximately a 2.9 acre parcel. The asphalt plant is originally being proposed as a portable plant which will have the mixer, the burner, and the silos which go with a typical permanent plant, which at some future point may be installed on site. Mr. Stinson noted that the bottom of the phase 2 will be at minus elevation 85, making the total depth of excavation from the highest point down just under 300 feet. Mr. Stinson noted that wetlands studies have been done on site, as well as looking at vernal pools, a traffic study, a substantial noise study, an extensive landscaping plan, a grading plan to provide both visual and noise berms along the northern property line, and feel they have addressed all of the requirements contained in the Gorham Land Use Code, as well as the Maine DEP regulations dealing with these types of facilities.

Mr. Stinson referred to staff's review in October of the applicant's September submission, and spoke about the substantial amount of review made during November, which resulted in Planning Board meetings and public hearings on November 5, November 19 and December 10, with workshop meetings on November 15 and 26, and a second site walk was conducted on November 18. Mr. Stinson said the January submittal was designed to address the remaining concerns and issues developed during those meetings and workshops. He said two supplemental submittals have been, one based on a meeting with staff where clarification of the need for public sewer was addressed, and one involving additional information in the Operations Plan Notebook.

At the Board's request, Mr. Stinson summarized the high points of the applicant's revised submissions as follows: first, since the January submittal, staff has asked for additional information that has been provided in the Operations Plan Notebook

Next, Mr. Stinson said that a visual has been added, per the request of the Board at the last sitewalk, to add another visual showing the sight lines from Queen Street looking south down on to the quarry. Mr. Stinson commented about the location of the silos in relation to the mass of abutting residences and the natural tree buffer that lies between Queen Street and the site, saying that the silos are not particularly significant in terms of the view shed. The lights have been lowered from 30 feet to 20 feet. Mr. Stinson confirmed to Ms. Robie that the silos are 84 feet tall, and replied to a query from Mr. Stelmack that the view will be the same, whether it is the temporary or the permanent asphalt plant.

Mr. Stinson next addressed the hydrogeology study requirements, with three test wells to be installed. He said two wells have already been installed, and he said the Board agreed that the 3<sup>rd</sup> well would be installed once the applicant can get back to the well location to drill it. He said that the location of the third well is now shown on the site plan, and the monitoring is taking place at the two wells installed last year.

The next item Mr. Stinson discussed was the applicant's request to go down to a 100-foot buffer; the plans now show a 100-foot undisturbed buffer around the property line; between 100 feet and 150, there is a 3:1 slope with no blasting; at 150 feet, blasting is allowed but only at a slope of 3:1 until the 200 foot mark is reached, at which point they can go one half to one for the quarry's high walls. A cross section of the plan shows that those high walls will be 40 feet high, broken up by 5-foot shelves or benches, then 40 feet more with a 5-foot shelf. He said reclamation is proposed to be loaming and seeding those areas of 3:1 slopes, using the overburden that has come off the site; the high walls will be checked for any loose or unstable rock, which will be removed if necessary, and any bench that will be above of the permanent pool of the phase 2 work will be covered overburden and will be seeded.

With respect to safety, Mr. Stinson said there will be a temporary 4-foot high wire fence, similar to what is seen along the Turnpike, around the entire site, there will be signs every 100 feet warning of the presence of an active quarry, and upon completion of the quarry, that fence will be replaced with a 6-foot high permanent chain link fence. He said that the temporary fence will not move with quarrying operations; rather, it will be installed around the entire site so it is all the way to the property line. In response to a question from Mr. Hughes, Mr. Stinson said it would be around the perimeter of the quarry.

Next, Mr. Stinson spoke about the potential impact of blasting on the Portland Water District's 48-inch concrete transmission pipe traversing the southwesterly corner of the applicant's property, and reported that a proposal has been worked out with the Water District that seismographs will be installed on and near that line for both initial blasts and as the quarry moves in a southwesterly direction. The results will go to the Water District, which will have the opportunity to discuss if anything in the blasting protocol needs to change. There will also be a baseline study done in terms of the baseline seepage of that pipe which will be studied as the quarry progresses to determine if the seepage increases.

Mr. Stinson said that all DEP permits have been received, including the Permit by Rule for the quarry, with the asphalt plant being reviewed with the quarry as an accessory use. They have the required Natural Resources Protection Act Tier I alterations wetland permit from the DEP. They need a permit to mine beneath the groundwater table in Phase 2, a Tier III permit is required to mine for Phase 3, and an air emissions permit from DEP for both the crusher and any asphalt plant that will be on site. The air emissions permit is specific to the type of equipment being used and specific asphalt plant.

Mr. Stinson commented about the MDOT traffic study that was done, and based on MDOT's review, shoulder widening is required on Route 237. He said that the DOT has approved the preliminary plans for the shoulder widening and will also be reviewing the final construction drawings. Mr. Stinson commented about the number of truck trips projected, 800 trips per day, and said this is a conservative estimate. The traffic study calculated a peak hour traffic generation rate of 72 trucks in one hour, which would occur between 7 and 8 o'clock in the morning as trucks enter the site to get loaded either with stone or asphalt and then leaving the site. The peak figure of 72 includes 26 in and 26 out, or a total of 52, for the asphalt plant and 10 in and 10 out, or 20, for the quarry, and 72 multiplied by 11 hours a day gives the 800 truck trip figure.

Mr. Stinson then discussed the noise issue, saying that the applicant has agreed to abide by the more stringent DEP noise standards. He said that several submittals have been reviewed by the Town's peer review engineer, Scott Bodwell of Resource Systems Engineers, and various noise mitigation methods have been proposed.

Mr. Stinson said there will be no drainage impacts from this project and the project meets all the local and state requirements for stormwater quality and quantity.

Mr. Stinson said landscaping details are available if the Board wishes to discuss them tonight.

Mr. Parker asked Mr. Stinson to indicate on the plan the perimeter of Lot 1, where the two existing test wells are located and where the third one will be drilled. Mr. Stelmack asked Mr. Stinson what direction the groundwater moves; Mr. Stinson said it is safe to assume that the groundwater is moving from west to east, toward Mosher Road from the site. Mr. Stelmack asked Mr. Stinson to indicate the location of the wells which the applicant will test and asked what the protocol is for the testing. Mr. Stinson said these wells are not those of direct abutters, and the baseline testing will be done before there is any blasting. Mr. Stinson said that the applicant has agreed to do it again if asked. Mr. Stinson replied to Mr. Fickett that the permits for the crusher and the asphalt plant will be submitted to the Town.

In reply to a question from Mr. Parker about degradation of buildings or wells or the water main, Mr. Stinson replied insofar as the water main is concerned, the seismograph reports will provide early information if there is any impact on that main. He said that most of the wells are located some distance away, but if there is a home owner who feels his well has been impacted, that will have to be documented for discussions to take place with Shaw Brothers. As far as structural problems are concerned, both the State and the Town require that the blasting contractor have liability insurance.

In conclusion, Mr. Stinson pointed out that the scale house is now shown on the plans, along with the building elevations to show what it will look like.

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#### OPENING OF PUBLIC COMMENT PERIOD

Ms. Robie noted that a great deal of public comment has been received on these applications during the many meetings that have been held and through written comment to the Planning Office which was subsequently provided to the Board. She said that since these are both permitted uses in the Industrial Zone, general commentary on the suitability of the proposed uses is not applicable. She asked that public comments be confined to the two revised applications referenced in this meeting, and to remember that these applications are not relative to the applicant except in that he has financial capacity to carry on the infrastructure, improvements and reclamation, so personal commentary involving anyone involved will not be permitted. These are technically complex applications, and complicated in terms of who has oversight of what aspect, and because there are Town rulings which are different from those of the State, it is a challenge to the Board and staff to make sure that everything is done as thoroughly as possible.

Ms. Robie said she has asked Mr. Boyce, Vice Chairman, to assist in keeping the public commentary from straying into inappropriate areas, and has asked Mr. Zelmanow to assist in keeping the timing accurate. Copies of hearing rules are available; Ms. Robie read the rules into the record as follows:

Any person wishing to speak at tonight's public hearing will be given an opportunity to do so in accordance with the following procedures:

1. Persons wishing to address the Board shall signify their desire to speak by coming forward to the public microphones when the Chair announces consideration of that item. Speakers will preface their comments by giving their first and last names and address; if they are appearing in a representative capacity, they will indicate whom they represent.
2. For the overall public comment session, two hours have been set aside. At the conclusion of the two hour time period allotted, the Board will either extend the hearing time or close the public hearing. Persons speaking during this public comment session shall limit their remarks for 5 minutes and they can speak more than once after everybody has spoken. Any group that wishes to address the Board can designate a spokesman, and this person can speak for 15 minutes, but they need to identify themselves as a spokesman for the group. Other group members can still speak.

3. The Board can receive oral or documentary evidence, such as plans or letters from persons not in attendance, but such evidence is restricted to the subject matter of the agenda item, and is restricted as described to the revised applications. The Board shall exclude irrelevant, immaterial or unduly repetitious testimony or other evidence.
4. Persons present at the public hearing are requested not to applaud or otherwise express approval or disapproval of any statements made or action taken at such hearing. Citizens shall refrain from interrupting other speakers. Citizens shall avoid personalities and conduct themselves in a civil, courteous manner.
5. Any questions should be addressed through the Chair. Speakers shall not attempt to engage in debate with other meeting participants. Board members are able to ask questions for clarification or for additional speaker if they so choose to do through the Chair.

**PUBLIC COMMENT PERIOD OPENED:**

Michael Goldman, 23 Clearview Drive, Gateway Commons: Asked if anyone is listening and not just having hearings. Is anyone listening to the concerns expressed by neighboring citizens about noise, traffic, noxious fumes, pollution from quarry dust and asphalt plant emissions, lack of air quality monitoring, parents' concerns about safety and the insufficiency of the proposed fencing around the quarry, the findings of the hydrogeologist hired by the Concerned Citizens of Gorham that indicated the applicant's test wells were not sufficient to assess the impact of the proposed mining operation. Is anyone listening to the silent residents of the Town. He urged the Board to consider the unintended consequences of its decision and make its decisions in phases.

Doug Moreira, 198 Libby Avenue: Spoke about the impact of this huge project on Gorham; trusting the Board to do the right thing. Mentioned noise, traffic, blasting, tailgates, pollution of air quality, safety concerns, water and noise pollution, impact on wildlife, deterioration of home values. Asked the Board to consider what its legacy to the Town will be, this will forever change the makeup of this Town.

Lynn Tyson, Libby Avenue: Hopes the Board will listen, many people don't come to the hearings because they feel they won't be listened to. Said she hopes the Board's mind is not already made up. Urged the Board to consider Gorham's quality of life and the feelings of its citizens; hard to believe that the Board and Shaw Brothers would do this to us. The Board is supposed to protect the citizens of Gorham by ensuring the continued beauty, quality and tranquility of Gorham, which this project will destroy.

Noah Miner, 32 Green Street: Spoke about reasons why Board should reject this proposal. Said the current location for this proposal conflicts with the future vision of the Town in the Comprehensive Plan, and questioned the applicability of using this zone for heavy industry without a transitional zone to protect abutting suburban residentially zoned properties from loss of property values, excessive truck traffic and blasting. Heavy truck traffic will have a very adverse impact on the Village. Board should reject this proposal as Gorham's sense of community will suffer.

Bob Frazier, 4 Aspen Lane: Questions applicability of zoning to accommodate this application. Expressed concern about whether the River can absorb whatever is carried from the site by the wind. This project does not fit the Comprehensive Plan.

Melissa Dudley, 21 Sebago Lake Road: Discussed traffic and safety issues on Mosher, based on her experience in living one mile from the H Pit of noise and truck speed. Asked who will enforce speed limits on Mosher Road.

Russell Sprague, 184 Libby Avenue: Quoted at length certain sections of the Land Use Code that deal with rock crushing, blasting, Special Exception Criteria, and air pollution, as well as the purposes of site plan

review, to support his contention that the application does not meet the standards of the Code. Mr. Sprague questioned the definition of “unreasonable” as it applies to abutters’ concerns.

Richard Exchange, 58 Queen Street: Doesn’t think his opinion matters but expressed concern about the future status of his well and wants to know who is responsible financially if he loses his well. Also expressed concern about truck traffic from the site using Queen Street.

Emily Peterson, 10 Polliwog Lane: Recited why she is against asphalt plants: they are smelly, noisy and loud, won’t want to open windows in the summer because of noise and smell, won’t have the beautiful environment that we have now, lots of our friends and family will want to move, this is not a place to raise children, and the animals will be affected by the polluted water and air. There will be health risks and more traffic and dangerous roads.

Shawn Holland, 95 Queen Street: Concerns about water quality, what recourse will people have whose house foundations crack, odors, heavy truck traffic, testing of noise that will be long gone by the time a test is conducted, this is not the right place for heavy construction.

Theresa Dolan, 309 Mosher Road: Quoted from the Land Use Code, Zoning Regulations, Purpose, to demonstrate that this application does nothing to comply with the goals stated. Because the applicant may meet the standards for noise, light and emissions does not mean those standards can be tolerated 24 hours a day, 7 days a week. LaChance Brick was a minor industrial use, this proposed plant and quarry is a major industry. This region of Gorham may become a slum. Discussed traffic issues, number of trucks, need for left turn lane, Town has asked the State for a review of a speed reduction on Route 237 to 35 mph, there should be an additional traffic review before approval. There should be an 8 foot fence around the entire site; spoke of applicant’s refusal to periodically monitor air quality and noise levels.

John Norton, 85 Gateway Commons Drive: Asked how to get on pre-blast inspection list; told to contact the applicant. Ms. Robie said it would depend on the distance of his property from the blasting. Mr. Shaw said that if the property is within a half mile it would be surveyed, but anyone who is outside that who asks they have always done and will continue to do so. Mr. Shaw said that most houses in Gateway Commons would be about 3000 feet with only a few within a half mile. Asks what is the Town’s requirement for dust monitoring; Ms. Robie advised that his questions and those of other interested parties will be answered after the public comment period is closed. Bad place to have a quarry and asphalt plant. If this passes, can the Town go to a referendum, is the Council’s word final? Mr. Zelmanow noted that this is the Planning Board, not the Town Council. Ms. Robie explained that the Planning Board’s job is to evaluate the application against the written ordinance of the Town and this Board will approve or not approve the application or approve it with conditions. Ms. Robie said that the next appeal from the Planning Board is Superior Court of Cumberland County.

David Golden, 120 Gateway Commons Drive: Said he is about 800 feet from the property line. Asks an open-ended question of what attracts people to live in Gorham, is it the peacefulness, safety, outdoors, to avoid larger city’s traffic congestion, and what is the abutters’ responsibility as residents – have the abutters done everything in their power to ensure the continuation of quality of life they currently enjoy?

Bill Neily, 47A North Street: Said he supported the applicant when he spoke in January of 2007, hasn’t changed his opinion. If the applicant meets the standards in the Code and agrees to the conditions placed by the Board, then the Board must approve the application. Suggests that those who oppose this particular project should go back to the Town Council to question the zoning.

Hans Hansen, South Gorham: Says he is a retired well driller and can say that if there is a problem as a result of blasting, it will be evident immediately, and Mr. Shaw will drill a new well if blasting caused a problem. Says that woodstoves cause greater pollution, everyone uses trucks for transport and truck traffic is

a fact of life. Can assure everyone who has a drilled well, if there is a problem he will go and do it for nothing. Believes Shaw will do a good job. (8:05 p.m.)

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*Stretch Break to 8:15 p.m.*

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Tom Holden, 16 Greentrees Drive: In favor of the project, time to give Mr. Shaw the approval he seeks. Believes they will do a class act.

Allene Bowler, 190 Mosher Road: Read the following letter into the record:

“I have written to you and also appeared before your board in the past on this item. I want to thank the Planning Board and the Planning Dept. for all the work that has been put into this item.

I still feel that we need a designated third lane on Rt. 237. Widening the shoulders is not addressing the safety issue: 100+ trucks a day going and coming from this address.

Air quality, prevailing winds, we were told is East – West, that means that Lily Lane, Wagner Farm, Gateway Commons, and even the Narragansett School will be affected by this plant.

This plant will lower the value of homes in the area – the smell alone will turn people away.

It was brought to our attention this past week in the newspaper that our birds and their eggs are toxic contaminated, especially in the Southern part of the State. The bald eagles and blue herons who now feed on fish from the Presumpscot River will be negatively affected by this plant. This will also affect other birds and animals who forage in this area, including frogs, salamanders and butterflies. You will note at the bottom of this letter who close the river comes to this plant, less than a quarter of a mile. Please, see that this plant is monitored for run offs of soil and water all the way to the river before it is too late.”

David Kent, 726 Fort Hill Road: Apologized for previous inappropriate remarks made at an earlier hearing. Supports the project, and if it meets the standards, it should be approved. Project will add to the Town’s tax rolls, will create jobs but will not have a big impact on the public school system. Gorham needs to be friendly to economic development and the applicant has a good reputation as a corporate citizen.

Ricky Ho, 56 Gateway Commons Drive: Simple pleasures of life at home will not be possible if the asphalt plant and quarry are approved. Problems will be blasting, silica dust, noise, traffic, truck fumes from idling trucks, asphalt orders. Does the Town want to put its citizens’ health on the line for a tradeoff in revenues. What recourse does a home owner have about lowered home values. Ms. Robie said that generally is not a subject taken up before the Planning Board.

Sarah Allison, 15 Queen Street: Concerned about odors, lowering of property values, loss of view buffer, truck traffic on Queen Street, noise of backup alarms on rest of site, impact on quality of life.

Deborah Cassidy, 6 Timber Ridge Road, Gateway Commons: Referred to Special Exception Standards involving smoke, dust or other airborne contaminants, odors, fumes, glare, hours of operation, noise, vibration, or fire hazard, saying that these applications cannot meet such Standards. Nothing saying how odors will be addressed, nor is there a method of recourse. Fence around the quarry should be permanent 6-foot fence now, not later. Establishing depth to groundwater requirement has not been met.

Jennifer Everett, 184 Libby Avenue: There are still Code requirements that the applicant has not met, especially the requirement for a hydrogeological study showing the depth of groundwater throughout the site.

She said that as the two test wells not located near where quarrying will be done, applicant has not established what the depth to groundwater is. Town did not ask for a peer hydrogeology review and did not give adequate status to the findings of the hydrogeologist hired by CCOG. Other standards she feels the applicant is not meeting: applicant is not offering air quality monitoring and is not proving that emissions are not unhealthful or hazardous to the community; buffering is inadequate to shield view shed. Urged the Board not to approve all three phases at this time.

Craig Sterling, 33 Canal Street: How will applicant respond to a homeowner with a problem? It is impossible not be emotional if someone lives within the area of this project. The Presumpscot River could be in jeopardy. Urges Board to act in the interests of the citizens.

Heidi Dolloff Noyce, 39 Dolloff Road: Expressed concerns about all the unknown issues of this project.

Chad Dudley, 21 Sebago Lake Road: Brought up the issue of a past approval which is now causing problems, asked the Board to look ahead to the future impact of this project for these neighbors. Consider an incremental approval instead of an umbrella approval. Determine now who will responsible for enforcement instead of waiting for a problem to happen.

Melissa Dudley, 21 Sebago Lake Road: Asked where the outlet is for citizens to express their dissatisfaction with this project due to its effect on quality of life and nuisance if the Board cannot take those concerns into its deliberations. Most speakers do not have facts and figures and are instead expressing displeasure on how the project will affect quality of life. How is it fair to the public? Ms. Robie replied that only the Town Council can change the requirements for development in Gorham. Only the Town Council can change the zoning. Ms. Dudley asked how is the public having a voice in these hearings?

Ms. Robie replied that over the course of the hearings, the public has pointed out areas where the requirements of the Code should be applied to this application; some subjects are not within the purview of the Planning Board, but other points have been made that have been taken into account very seriously. Mr. Zelmanow said that when this application was first submitted some 19 months ago, it looked very different than it does today, that the applicant has heard many of the public comments and the plan has evolved. He said that public input is very important, the Board and the applicant do hear what the public has to say. Mr. Hughes echoed Mr. Zelmanow's comments, telling the first speaker that the Board is indeed listening to the concerns of the abutters and others. Mr. Parker noted some of the items that have been changed as a direct result of discussions in public hearings, such as changes in safety issues, such as the traffic patterns, fencing, landscaping, asphalt site having been moved, change of the access road site

Mike Goldman, 23 Clearview: Said there is only one applicant, but there are hundreds of neighbors who are concerned. The Board has the latitude to hold this applicant to the highest standard.

Russell Sprague, 184 Libby Avenue: If the Board feels that the applicant is meeting the requirements of the Code, use the latitude you have to address the neighbors' concerns to lessen the impact on them.

Noah Miner, 32 Green Street: Is there a process in place to allow for a change in the Code for the citizens once an application is before the Board. Ms. Robie replied that there is not if the project has had substantive review, but any person can go to the Town Council and request an ordinance change. This project has received substantive review status, which was defined by the Town Attorney as when an application has been submitted and has commenced by the Planning Board. Mr. Miner asked how to file an appeal in Superior Court; Ms. Burns replied that it is not appropriate for the Planning Board to give legal advice; there are rules of court and statutes that will tell someone how to do it.

**Michael Parker MOVED and Edward Zelmanow SECONDED a motion to close the public hearing.**



Discussion: Ms. Burns recommended that the public comment period be closed, not the public hearing. Mr. Parker confirmed with Ms. Burns that this motion does not preclude reopening the public comment period at some future date.

**Michael Parker MOVED and Thomas Hughes SECONDED an amended motion to close the public comment period. Motion as amended CARRIED, 7 ayes. [9:11 p.m.]**

Danny Shaw said that the asphalt plant project comes about as a result of a monopoly. Scare tactic flyers come from a competitor. The facts of the project do not warrant the concerns of the public: DEP will measure noise; DEP phases the wells for the life of the quarry; MSHA does not believe silica dust is a problem in the northeast, but if it were, it would be for the people working on the crushers in front of the screens, not the neighbors; the 4-foot safety fence will be the first in the Town; they will take care of problems if people call us. There is nothing to monitor the air for, as there is no standard to monitor to. The asphalt plant will not add to traffic, the market would be Gorham, Windham, Westbrook and Standish. The view in Phase 3 will be attractive, it will be an industrial park with a large pond and ledge face in back, with landscape buffering and a 20-foot high berm in front. Route 237 will be louder than this project.

Mr. Stinson had no comments.

Mr. Poirier gave the staff comments. He began with comments with the Fire Chief, who has no further requirements beyond those stated in his memo of December 21, 2006, and various items from that memo are conditions of approval: for the asphalt plant, they are draft Conditions 7, 8, 9, 10 and 11; and for the quarry, draft Conditions 7, 8, 9, 10, and 11. Two review memos were received from the Code Enforcement Officer and the Town Engineer dealing with the applicant's latest submission. The Town Engineer had no further comments. The Code Enforcement Officer's memo stated that if two signs are proposed, one for each lot, one should be the "Asphalt Plant" and the other "Brickyard Quarry," as one of the signs would be off-premise, which would not be permitted.

Mr. Poirier said that the Town's traffic reviewer, Bruce Munger of HNTB, was asked to review the 800 truck trips figure that caused some abutter concerns. Mr. Munger submitted a review dated March 17, 2008, in which he stated that "Using the applicant's peak hour data (72 trips), we have estimated the daily trip generation by multiplying the peak hour trips times the number of hours the facility operates (11 hours). This yields a total number of daily trips of 792. The applicant's number of trips identified is 800. It is HNTB Corporation's opinion that this is a conservative daily rate, which would only be reached during peak seasonal operations." Mr. Poirier noted that Mr. Munger reached this conclusion because the applicant used the peak hour trips for his calculation, which would probably not be going on throughout the daily operation.

Mr. Poirier said that the Town's stormwater review engineer, Steve Bushey of DeLuca-Hoffman Associates, last submitted a review on February 19, 2008, based on the applicant's January 8, 2008 submission. Mr. Bushey's review memo states that "At this time it appears that the plans are satisfactorily complete and that overall they are acceptable for consideration for approval by the Planning Board." Mr. Bushey had some minor amendments which the applicant's design engineer, Shawn Frank, has addressed in the March 12 submission. Mr. Bushey asked that there be a condition of approval requiring that all visual and laboratory monitoring of stormwater samples as required under the Multi-Sector General Permit be reported to the Town; this had been added as Condition 27 for the draft quarry conditions of approval and Condition 18 to the draft asphalt plant conditions.

Mr. Poirier said that the Town's noise consultant, Scott Bodwell, submitted his last review on February 19, 2008, based on the applicant's January 8, 2008 submission. In that review, Mr. Bodwell said: "The Noise Assessment report, Supplements and Letters by SE Ambrose and Sebago Technics demonstrate that the proposed Brickyard Quarry has the capability and willingness to meet the sound level limits set forth by applicable state and local noise standards. Noise mitigation measures will consist of utilizing terrain features, site grading, and quarry walls, equipment modifications and fixed and portable noise barriers.

Other mitigation options may be developed over the life of the proposed quarry and some flexibility to implement such options should be recognized in permit conditions.” Further, “RSE recommends that the Town of Gorham work in conjunction with Maine DEP to confirm that sound levels will be measured per Section 375.10(H).” Mr. Poirier said that Conditions of Approval addressing noise for the asphalt plant are Conditions 13, 14, 20, 21 and 22; and for the quarry operation draft conditions, those addressing noise are 14, 15, 16, 17, 18, and 20.

Mr. Poirier noted that other items for discussion with the applicant include additional buffering between LaChance Brick and the asphalt plant. The Board could also discuss whether the applicant’s request for one-hour blasting notification is adequate. Staff has checked the blasting notification requirement for Brandy Brook quarry, which is 7 days. Mr. Poirier said the two lots need to be separated into two different ownerships, for which proposed deeds have been submitted. There is also a requirement for drainage easements for the stormwater ponds.

The Board then began a review of staff’s Site Report of March 12, 2008. At the request of Ms. Robie, Ms. Fossum explained that the most recent practice concerning MDOT permits or approvals for offsite improvements has been to approve a project with a condition in place that the offsite improvements will be made, but that if there are any changes to the plan which the Board has viewed during the project review, then the applicant must come back before the Board with the new plans to amend the approval to incorporate the new plan. Oftentimes the preliminary plan discussed with MDOT is not actually the final design plan that is approved. Mr. Stinson said they are familiar with this requirement, and this is a fairly straightforward job, a shoulder widening, but if there are any changes they will come back. Ms. Fossum noted that there is a condition proposed on both the quarry and the asphalt plant that no certificate of occupancy shall be issued prior to the completion of all required road way improvements. Mr. Shaw said they would like to build all the roads and the Route 237 work with materials out of this pit instead of hauling material in. Ms. Fossum said the condition could be reworked for a proposal for a performance guarantee to be put in place with language that “No certificate of occupancy shall be issued prior to a performance guarantee for the offsite roadway improvements as set forth in the MDOT permit and detailed in the MDOT final approved construction drawings.”

Mr. Stelmack asked if a 7-day blasting notification is a code requirement. Mr. Shaw said they don’t know if they will blast until 4:30 or 5:00 in the morning of a proposed blast. He said the best method is to send out a letter before the season starts giving a date when blasting operations will begin, and then one hour before a blast, they call not only the people within a half-mile but anyone who wants to be added to the list. Ms. Fossum said that the 7-day notification requirement was probably taken out of the Code several years ago. Ms. Robie said that when the Board makes findings of fact on the quarry, it can discuss what the conditions of the blasting permit will be.

Mr. Hughes asked about “Access to the Site,” page 5 of the Site Report, and questioned the reference to “... two locations off of *Route 25*.” Staff said they will change that reference to read Route 237. Mr. Zelmanow noted that the same error occurs on page 13.

Mr. Boyce commented that on page 2 of the Site Report, dealing with the phases, it would be helpful to add how the quarry will be drained, phase 1 and 3 being gravity drained and phase 2 being pumped out. He also asked about a section of the Code dealing with noise, referenced on page 8 of the Site Report; Ms. Robie replied that that section was not taken out when the ordinance was reworked by the Town Council.

Ms. Robie commented that a sentence on the same page stating that the applicant “has agreed to meet” DEP noise standards is not accurate in that the applicant *must* meet those standards. While Ms. Fossum said that this portion of the Site Report deals only with the quarry, Ms. Robie commented that the applicant has provided a letter from the State Mining Coordinator who indicates that he considers the asphalt plant to be

part of the quarry, irrespective of what the Town of Gorham says, and that therefore it must also meet the MDEP standards involved in the Notice of Intent to Comply.

Mr. Poirier advised Mr. Stelmack that Mr. Munger's letter confirmed the applicant's calculations of 800 truck trips.

Mr. Stelmack suggested on page 14 that the item dealing with groundwater protection and testing of abutters' wells is not to ensure groundwater *levels* but rather groundwater *qualities*. Ms. Robie said she believes that the well water level is to be protected. Mr. Stinson suggested groundwater *quality* and *water level*. Mr. Stelmack said that the letter which Shaw Brothers had been sent to the abutters whose wells might be tested deals only with water quality, and if the intent is to insure levels as well, then the letter should perhaps be rewritten. Mr. Stinson indicated that the letter would be rewritten. Mr. Stelmack suggested changing Item L in the Site report to read "... periodic well testing to ensure groundwater levels and quality are protected." In response to a query from Mr. Parker, Mr. Stinson said that if a well goes dry or the quality of water changes and that can be directly related to the quarrying operation, then the applicant has a responsibility to that owner to fix it.

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## 2. SCHEDULE OPTIONAL MEETING IF NEEDED

Ms. Robie noted that the time was approaching 10:00 p.m. and discussed what the Board's agenda for a possible Thursday meeting might be of going through the requirements, issues and conditions of approval for first the quarry and then the asphalt plant. Mr. Parker said he would like to meet Thursday and not go beyond 10:00 tonight. Mr. Hughes concurred, as did Mr. Fickett, Mr. Boyce and Mr. Stelmack. Mr. Parker noted that there would probably not be any public comment period on Thursday, although Ms. Robie said the public comment period can be reopened by motion and vote by the Board. Ms. Fossum told Mr. Stelmack that no new material was anticipated to be submitted.

Mr. Stinson distributed copies of the applicant's suggested changes to the draft conditions of approval.

**Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to continue the meeting to 6:00 p.m. on Thursday, March 20, 2008. Motion CARRIED, 7 ayes. [10:00 p.m.]**

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## 3. ADJOURNMENT

**Michael Parker MOVED and Thomas Fickett SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [10:05 p.m.]**

Respectfully submitted,

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Barbara C. Skinner, Clerk of the Board  
\_\_\_\_\_, 2008