



**Town of Gorham
March 20, 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**

Staff Present:

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

Members Absent:

EDWARD ZELMANOW

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 Edward Zelmanow was absent.

**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.

The Chairwoman opened the meeting by stating that at the meeting on March 17, 2008, the Board heard the applicant's presentation, public comments, and the applicant's responses, and began the process of considering the prepared site plan and conditions of approval. Tonight the Board will begin the detailed consideration of the applicant's revised submissions dated January 8, 2008.

She said that the first order of consideration will be the Brickyard quarry, followed by the asphalt plant. Consideration of the quarry has a number of requirements; the Board is going to start by considering the items required for submission. Submissions have been made by the applicant to cover all of the submission requirements. The Board's review process will determine the adequacy of the submissions as they address the approval criteria. She expects that the Board will cover an issue completely when it is brought up in relation to one of the submission requirements. Any conditions of approval required by the majority of the Board will be listed on the easel pad for development by the Town Planner and Town Attorney.

Next, Ms. Robie said that the Board will review the operation requirements and vote on the waivers required for the quarry as detailed in the operational requirement sections of the Code. The Board will consider and vote on the use of the 100-foot strip of the quarry beyond the normally allowed working hours of the quarry in this section. This physical area and use of the quarry is included in the deliberation of the Special Exception Criteria. Each waiver will require a Finding of Fact. Any conditions of approval will be noted as described above.

Ms. Robie said that the Board expects to have enough information to vote on the Special Exception Criteria when the review of the submissions and operations requirements is completed. She said that the Special

Exception Criteria will be voted on the three phases of the quarry, separately for each requirement. It is possible that conditions of approval will be generated during these discussions as well. Findings of fact will be made for each vote on each Special Exception Criterion. The Town Attorney has instructed the Board to continue to vote on the Special Exception Criteria in the face of any being denied.

The Board will then consider the Site Plan Criteria and follow the same process.

When these deliberations and votes have been completed, the Board will postpone the meeting so that conditions of approval can be developed. Upon and acceptance by the Board of developed conditions of approval, the Board will vote on the quarry application. Following that vote, the blasting permit will be discussed and voted upon if appropriate.

Ms. Robie noted that a revised Site Report has been prepared, as well as revised conditions of approval, and proposed revisions to the conditions by Mr. Zelmanow and by the applicant, which will be discussed topically.

Ms. Robie said that the Board values the public's input and will continue to do so. She noted that during the meeting on March 17, 2008, the Public Comment Period was closed, but it can be reopened by a majority of the Board at any time. Additionally, the Board may address questions of the public if it chooses to obtain additional information from the public. Ms. Robie said that any disagreement or appeal of the Planning Board's decisions on these applications would be heard in Cumberland County Superior Court. With respect to questions asked by the public about further recourse, these are beyond the scope of the Planning Board. The Town Attorney is present to advise the Board and the applicant on the legality of the proceedings, and any legal advice about further options of the public cannot properly occur during a Planning Board meeting.

The Planning Director described the items contained in the Board members' packets for tonight's hearing:

1. Proposed conditions of approval, which are still subject to editing and revision by Board members. Changes incorporated in these conditions are primarily non-substantive, edits and grammatical corrections;
2. Additional proposed draft conditions of approval which have not been voted on the Board and remain open for discussion;
3. Applicant's proposed revisions to the conditions of approval;
4. Changes to the Site Report, which involve the description of the drainage of the quarry in its three proposed changes, as well as a correction to the proposed quarry operations starting time of 6:30 a.m. to 6:00 a.m. A copy of the full Site Report is available, although it has been assumed that Board members would wish to continue using and annotating the Site Report version discussed at the March 17, 2008 meeting;

Ms. Fossum also noted that worksheets have been prepared for a discussion of the application requirements and the operational requirements later this evening.

The application requirements worksheet, covering Section 4)a), Permit Application Requirements of Chapter 11, requirements subsections 1 through 10, was distributed to the Board, which determined that each item would be discussed separately, with a finding of fact made on each item.

Item 1: Initial application fee in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order;

FINDING OF FACT: The appropriate application fees have been submitted.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion accepting the finding of fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [6:12 p.m.]

Item 2: Names and addresses of current owner of the property and the current operator of the operation, and a copy of the deed or lease agreement if the operator is not the owner:

FINDING OF FACT: The applicant has demonstrated adequate right, title or interest. Shaw Bros. Construction, Inc. is the proposed operator of the quarry operation.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion accepting the finding of fact that the applicant's submission for this item is complete and adequate.

Discussion: Ms. Robie's mention of abutter information being included in the submission for Item 2 was stricken and the motion was amended by the Movant and agreed to by the Secunder.

Motion CARRIED, 6 ayes (Edward Zelmanow absent). [6:13 p.m.]

Item 3: A site plan, drawn to a scale of one inch to one hundred feet, showing the location and boundaries of the property; the boundaries of proposed excavation areas (a boundary survey shall be required for any proposed pit in excess of five (5) acres); the present use of the entire property including any existing excavated areas; present uses of adjacent property; the location of all proposed access roads, parking areas and temporary and permanent structures; the type and location of all existing surface and ground water, including location of existing wells and streams, drainage ways, and depth to ground water at the site of the proposed excavation as determined by test borings and other geotechnical methods; the contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot contour intervals, or at intervals acceptable for a Department of Environmental Protection permit application; and the location of all proposed hazardous material storage areas; and other applicable site plan review requirements of Chapter IV, Section VI.

FINDING OF FACT: The applicant has provided a boundary survey and an 18+ sheet plan set drawn to appropriate scales showing the present use of the entire property including any existing excavated areas; present uses of adjacent property; the location of all proposed access roads, parking areas and temporary and permanent structures; the type and location of all existing surface water, including the location of existing wells and streams, drainage ways, and depth to ground water at the site of the proposed excavation as determined by test borings and other geotechnical methods (as provided in a report from MAI Environmental); the contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot contour intervals, or at intervals acceptable for a Department of Environmental Protection permit application; and the location of all proposed hazardous material storage areas; and other applicable site plan review requirements of Chapter IV, Section VI.

DISCUSSION: The Town Attorney advised the Board that the above requirement applies to all pits, and that item 10 in the section applies to only those pits of five acres or more, so there is a difference in the hydrogeological submissions required. The Board discussed the location of the test borings wells as dictated by the Maine DEP; the applicant's engineer, Walter Stinson, said that the specific elevations of the depth to groundwater are not shown on the plans but MAI Environmental's letter provides that information. It was ultimately concluded that a condition of approval shall be crafted requiring the applicant to show the elevation of groundwater at each specific well, with the date the level was taken, as set forth in MAI's letter, on Sheet 5 of the site plan.

Michael Parker MOVED and Thomas Hughes SECONDED a motion accepting the finding of fact that the applicant's submission for this item is complete and adequate as written and as modified by a condition of approval stating that the applicant shall show on Sheet 5 of the site plan the elevation of groundwater as set out in MAI letter of March 7, 2008. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [6:30 p.m.]

Item 4: A plan for controlling access to the site. The Planning Board may impose such additional access limitations as the particular circumstances of the proposed operation require to meet approval standards of Section 4.b. At a minimum, a solid gate with a lock shall be located at all entrances;

FINDING OF FACT: The access to the site will occur by a paved driveway located off Route 237. The main entrance and exit for the asphalt plant will also be the main entrance for the Brickyard quarry. The applicant is proposing to pave 500 feet of the access road with a 65 foot entrance radii to allow trucks to enter the site with a faster turning speed than would occur with a tighter radius allowed under the ordinance. Access will be further restricted by a four foot construction fence located around the perimeter of the active quarry area and gated access at all road entrances.

DISCUSSION: The Board discussed the adequacy of the proposed 4-foot temporary fence around the quarry site with a 6-foot permanent fence at the end of the quarry life. Ms. Robie noted that the Ordinance does allow the Planning Board to require that a fence be installed, but commented that there has been no discussion of the proposed berms in conjunction with the 4-foot fence. The Board then modified the Finding of Fact to include the addition of language about the temporary berms, signage, a more specific description of the 4-foot fence, the installation of a permanent 6-foot chain link fence on completion of reclamation, and fence locations as described in the application and shown on the plan. The Board voted on the revised Finding of Fact as follows:

REVISED FINDING OF FACT: The access to the site will occur by a paved driveway located off Route 237. The main entrance and exit for the asphalt plant will also be the main entrance for the Brickyard quarry. The applicant is proposing to pave 500 feet of the access road with 65 foot entrance radii to allow trucks to enter the site with a faster turning speed than would occur with a tighter radius allowed under the ordinance. Access to the active quarry will be further restricted by providing temporary berms and a continuous 4-foot high highway type wire fence with signs. Upon completion of reclamation a permanent 6-foot chain-link fence shall be installed at the top of the reclaimed quarry slopes. Both entrances to the quarry will be gated. The locations of fences will be as described in the application and shown on the plan.

Mark Stelmack MOVED and Michael Parker SECONDED a motion accepting the finding of fact that the applicant's submission for this item is complete and adequate as written and as amended this evening. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:00 p.m.]

Item 5: An operations statement, which shall include the approximate date of commencement of excavation and the duration of the operation, proposed phasing of the operation, proposed hours and days of operation, the estimated volume of the excavation, the method of extracting and processing, including the disposition of topsoil or loam, the equipment proposed to be used in the operations, and the operating practices proposed to be used to prevent surface or groundwater pollution, and minimize noise, dust, air contaminants and vibration;

FINDING OF FACT: The applicant has submitted information addressing the approximate date of commencement of excavation and the duration of the operation, proposed phasing of the operation,

proposed hours and days of operation, the estimated volume of the excavation, the method of extracting and processing, including the disposition of topsoil or loam, and the equipment proposed to be used in the operations, and an operations plan notebook that outlines and the operating practices proposed to be used to prevent surface or groundwater pollution, and minimize noise, dust, air contaminates and vibration

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:04 p.m.]

Item 6: An erosion and sedimentation control plan designed to standards of the Cumberland County Soil and Water Conservation District;

FINDING OF FACT: The applicant has made provisions for short term and long-term sedimentation and erosion control and will adhere to MDEP Best Management Practices, which are the same standards used by the Cumberland County Soil and Water Conservation District.

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:05 p.m.]

Item 7: A final reclamation plan pursuant to Section 6 of this section.

FINDING OF FACT: The applicant has provided a reclamation plan.

Douglas Boyce MOVED and Michael Parker SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:06 p.m.]

Item 8: Identification of all required State and/or Federal permits, including, if applicable, a Department of Environmental Protection permit;

FINDING OF FACT: The applicant is requesting final approval from the Planning Board for all three quarry phases at this time, conditioned upon final MDEP approval of Phases 2 and 3 in the future.-The applicant has received its MDEP permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase 1. The applicant has also received a Natural Resource Protection Act Tier I permit to alter 14,863 square feet of forested wetland and wet meadow to construct the access road and berms associated with Phase 1 construction.

DISCUSSION: The Board noted that some permits were not listed in the proposed Finding of Fact; as a result, the Finding was amended and voted upon as follows:

REVISED FINDING OF FACT: The applicant has identified all required state and federal permits. These include the following: The applicant is requesting final approval from the Planning Board for all three quarry phases at this time, conditioned upon final MDEP approval of Phases 2 and 3 in the future.-The applicant has received its MDEP permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase 1. The applicant has also

received a Natural Resource Protection Act Tier I permit to alter 14,863 square feet of forested wetland and wet meadow to construct the access road and berms associated with Phase 1 construction. The applicant also must receive an MDOT permit for the entrance and will need to acquire a Natural Resources Protection Act Tier Three Wetlands permit prior to commencement of Phase 3 of the quarry; this permit cannot be acquired at this time due to its two-year length. The applicant must also receive a variance from the MDEP to mine below the water table and must receive a MDEP air emissions license.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate as written and modified by the Board this evening. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:11 p.m.]

Item 9: A performance guarantee in the form of a bond, letter of credit, or such other financial instrument as deemed satisfactory by the Town Manager covering the cost of the reclamation plan;

FINDING OF FACT: The applicant will provide a performance guarantee per the requirement of the Land Use and Development code and as detailed in the Conditions of Approval.

DISCUSSION: The Board identified Condition of Approval #6 as the applicable condition, which condition states:

“That prior to initiating any construction activities at the project site, Shaw Brothers Construction, Inc. shall provide a reclamation performance guarantee in a form and amount acceptable to the Town Attorney and the Town Manager. This guarantee shall include provisions for a periodic three-year review of the performance guarantee and adjustment of coverage based on an updated estimate of the cost of reclamation for each phase of the project.”

Ms. Robie noted that there has been no changes proposed by the applicant to this Condition.

Michael Parker MOVED and Thomas Hughes SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:14 p.m.]

Item 10: For new pits of five (5) acres or more, the following additional submissions are required:

- (a) A hydrogeological study which shows the depth of ground water throughout the site and establishes that the gravel pit operation will not cause any pollution to ground water and/or surface water.

FINDING OF FACT: The applicant proposes to keep quarry activities 5' above the water table until a detailed hydrogeological study has been completed and the applicant has received a variance from the Maine Department of Environmental Protection to mine below the water table. As part of the hydrogeological study two monitoring wells were drilled in the northeastern and southeastern corners of the site with a third well to be drilled along the western property boundary when the applicant can better access the site. The applicant has submitted a hydrogeological study from MAI Environmental reporting water-bearing bedrock fractures on the two drilled wells. The applicant has offered water quality testing to 15 residential properties that use wells in the vicinity of the site. The applicant has also submitted a Spill Prevention Control and Countermeasures (SPCC) Plan addressing protocols for fuel and oil spills at the site.

DISCUSSION: The Board discussed the need for a condition of approval for the drilling of the third well, as well as a condition of approval dealing with the installation of the third monitoring well along the western boundary of the quarry, as well as a requirement for a time specific for such drilling. Danny Shaw, applicant, offered to drill the third well within 60 days of the Board's approval of the project. As a result, an additional condition of approval was crafted stating that the **applicant shall drill the third monitoring well along the western property boundary within sixty (60) days after the approval of the quarry and during construction. The water table level at that well shall be added to the plan and submitted to the Town Planner, together with an update to the hydrogeological study.** The Finding of Fact was amended as follows:

REVISED FINDING OF FACT: The applicant proposes to keep quarrying activities 5' above the water table until an amended hydrogeological study has been completed and the applicant has received a variance from the Maine Department of Environmental Protection to mine below the water table. As part of the hydrogeological study two monitoring wells were drilled in the northeastern and southeastern corners of the site with a third well to be drilled along the western property boundary in accordance with the condition of approval. The applicant has submitted a hydrogeological study from MAI Environmental reporting water-bearing bedrock fractures on the two drilled wells. This study will be updated when the third well is drilled during construction.

The applicant has offered water quality testing to 15 residential properties that use wells in the vicinity of the site.

The applicant has also submitted a Spill Prevention Control and Countermeasures (SPCC) Plan addressing protocols for fuel and oil spills at the site.

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate, as amended tonight and as modified by a condition of approval that the applicant shall drill the third monitoring well along the western property boundary within sixty (60) days after the approval of the quarry and during construction. The water table level at that well shall be added to the plan and submitted to the Town Planner, together with an update to the hydrogeological study. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:49 p.m.]

(b) A traffic study which sets forth what the maximum estimated volume of traffic into and out of the pit will be, which describes the kinds of trucks and equipment which will be going into and out of the pit, which describes any existing or potential traffic hazards on roads servicing the site and applicant's plans to address them, and which describes the ability of such roads physically to withstand the additional traffic generated by the site. The study shall consider the actual existing traffic condition in the vicinity of the pit.

The applicant has provided an updated and revised traffic report addressing the submission requirements. The applicant has estimated a total of 200 vehicle trips entering and leaving the site on a daily basis for the quarry operations. The a.m. peak number of quarry trips is 20 and falls between 7 a.m. and 8 a.m. the p.m. peak number of trips is 20 and falls between 5 p.m. and 6 p.m. The applicant has received a Maine Department of Transportation Driveway (MDOT) Entrance Permits requiring State Route 237 shoulder widening to a minimum of 8 feet for the appropriate length of a truck's acceleration/ deceleration distance. MDOT has given the applicant preliminary plan approval but final MDOT approval is required before the applicant can construct the road widening. The applicants have shown the required Route 237 widening on sheets 3 and 4.

DISCUSSION: Chairman Robie noted that a Condition of Approval has been identified that the applicant must provide the final MDOT permit and if it is significantly different as determined by the Planning Director, the applicant must return with a plan amendment.

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion accepting the Finding of Fact that the applicant's submission for this item is complete and adequate. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:51 p.m.]

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion that the Board has made the determination that the applicant has submitted the required application. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [7:52 p.m.]

Stretch Break to 8:15 p.m.

The Board then began review of the Operational Requirements for New and Existing Pits under Chapter II, Section 5 of the ordinance.

Ms. Robie explained that the applicant is requesting approval of three waivers from the following operational requirements:

- a. To reduce the 200 foot buffer strip between the quarry lot and the asphalt plant lot –
- b. To reduce the 200 foot buffer strip between the quarry lot and the Morin Brickyard Lot (from 200 feet to 10 feet); -
- c. To reduce the buffer from 200 feet to 100 feet along the northerly and westerly property lines.

Operational Requirements for New and Existing Pits

Unless otherwise expressly provided, the following requirements apply to all gravel pits; provided, however, any existing gravel pit lawfully in operation at the effective date of this ordinance which does not comply with these operational requirements shall be grandfathered with regard to such deficiencies except that there shall be no grand fathered rights as to hours of operation in paragraph d, duty to minimize dust in paragraph (e), and erosion and sedimentation control as provided in paragraph (g); provided, further, any such grandfathering shall not apply to any area for which an expansion permit is required.

- a) A buffer strip of 100 feet from all public rights of way and two hundred (200) feet from all other boundaries of the property is required except in the instance of a waiver as provided in this section. The slopes of the side of the pit shall be no more than 3:1. This slope requirement shall not apply to a quarry that is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 M.R.S.A., section 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection. No excavation is permitted within the buffer strip of any pit, including a quarry, except where provided for within. Natural vegetation shall be retained within the buffer area, except as recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board. To the extent necessary to protect neighboring uses from dust, noise and unsightly appearance, the Planning Board may require the applicant to provide screening, berm or a combination where there is an inadequate natural buffer. No excavation, including such operations

existing at the time of adoption of this ordinance shall encroach into these buffer strips and no existing operation lawfully located within such buffer areas shall be permitted to expand closer to such line or lines. Except that applicants with new and existing excavations may apply for a waiver of the 200 foot buffer strip in any of the instances described below, and the Board shall grant such waiver in the case of

- (1) two abutting working gravel pits where the Planning Board may waive the requirement for any buffer,
- (2) where the pit abuts unbuildable land of a public utility provided the excavation remains at least one hundred (100) feet from the far side of the public utility's property line, and in no case shall it be any closer than ten (10) feet from the public utility's property line.
- (3) where all adjacent property owners within the area of reduced buffer agree to a lesser distance. Any such agreed upon reduction (to not less than a 10 foot buffer) will be consistent with the purposes of this ordinance in Section 1, The buffer strip may be reduced upon recording by all abutting property owners within the area of reduced buffer of reciprocal deeds stating that each agrees to the waiver. In the event of a reduced buffer under this subsection, the pit shall not be subject to the noise limits established by subsection 4 of this section of Chapter II, Section H of this Code in the area of the boundary reduced under the terms of this subsection if the abutting property owner agrees that the noise limits will not apply to the shared property line or that the noise limits may exceed an amount established in writing. Any agreement concerning the noise levels shall be included in the reciprocal deeds.

The Board discussed the sections of the Ordinance that apply to the buffer reduction to zero along the 100-foot asphalt plant boundary where the extension of the industrial area will occur, and determined that this was an appropriate action due to the apparent conflict between the buffer requirement and the industrial use provision recently adopted by the Town Council, who clearly intended for a mineral extraction use to be able to have a small area of connection with an abutting industrial use in certain circumstances. The applicant's plan shows that the buffer will be used entirely by industrial abutting use. The Board read the portions of the ordinance that applied to this ruling and concluded it was an appropriate action.

Thomas Hughes MOVED and Douglas Boyce SECONDED a motion to grant the waiver request to reduce the buffer to zero on the 100-foot strip between lot 2 and lot 1. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

The Board then took into consideration the second buffer request to reduce the buffer along the Brick Morin westerly line and the quarry easterly line from 200 feet to 10 feet . Mr. Stinson said there is no activity proposed along the southerly line, and the Board concurred that a condition of approval should be added that the buffer reduction on the southerly side be eliminated up to the Portland Water District pipe line and that a natural no-cut zone shall be retained in the buffer area for the duration of the quarry, except as recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board.

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion to grant the waiver request to reduce the 200 foot buffer strip between the quarry lot and the Morin Brickyard Lot from 200 feet to 10 feet. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

FINDING OF FACT: The applicant has provided a recorded copy of a "Mutual Agreement to Waiver or Reduction of Common Setback Requirements" between the Morin Brick Company and S.B. Aggregates,

LLC to remove loam, sand, gravel, clay, or other minerals from within 10 feet of the shared property boundary. This Agreement contains the specific provision to mutually allow the buffer reduction between the quarry land and Morin Brick on the western and southerly side as shown on the plans.

Douglas Boyce MOVED and Mark Stelmack SECONDED a motion to add the last sentence above to the Finding of Fact. Motion carried, 6 ayes (Edward Zelmanow absent).

The next buffer reduction request to be discussed involved reducing the buffer from 200 feet to 100 feet along the northerly and westerly property lines. The Board concurred that a Condition of Approval should be added that the buffer reduction on the southerly side be eliminated up to the Portland Water District pipe line and that a natural no-cut zone shall be retained in the buffer area for the duration of the quarry, except as the applicant may apply to reduce the buffer from two hundred (200) feet to not less than one hundred (100) feet, which reduction the Planning Board shall grant, provided that the applicant demonstrates:

- (a) Noise generated at the excavation site, including noise generated within the reduced setback area may not exceed the noise requirements set forth in Chapter II, Section I (H)(1) of this Code. During the peak activity of 60 minutes in a 24 hour period, noise may not exceed 100 decibels at 600 cps when measured at the source.

FINDING OF FACT: The applicant has agreed to meet the Department of Environmental Protection noise standards regarding the quarry operation, which are more stringent than the Town's noise standard. The Town hired a third party noise consultant, R. Scott Bodwell, P.E., Resource Systems Engineering, to review whether the quarry proposal meets the Maine DEP noise standard. After review of the noise study supplied by the applicants noise professional (SE Ambrose) the Brickyard Quarry has the capability and willingness to meet the sound level limits of applicable state and local noise standards. Resource System Engineering identifies the need for periodic measurements of sound levels at nearby protected locations during facility operations. Resource System Engineering also recommends that Town of Gorham work in conjunction with Maine DEP to confirm sound levels are in compliance as well as requesting written reports of sound level measurements and other site inspections by the Maine DEP.

- (b) the applicant provides a satisfactory plan to control the migration of dust that results from the mining operation which may include sweeping, paving, watering or other best management practices, and

FINDING OF FACT: The applicant's quarry operation will be in such a way that at a minimum the crushers will be operating behind a 100' wide wooded buffer and 100' earthen berms at the limits of excavation. This will assist in mitigation of dust from the operation site to abutting properties. The crushers working within the quarry will require an air emissions license from the Air Bureau of the Maine DEP, these licenses will be provided to the Town prior to operation. In the "Operations Plan Notebook, January 2008" the applicant identifies the procedures to control the migration of dust. The procedures to control dust migration proposed are sweeping, paving, watering, using calcium chloride in accordance with State requirements, or other forms of Best Management Practices on quarry access roads and aggregate piles. The applicant is also proposing to install spraybars on rock crushers working in the quarry. The "Operations Plan Notebook, January 2008" identifies the quarry site supervisor will perform visual opacity determinations and ensure the fugitive emissions do not exceed an opacity of 20% or more for more than 5 minutes in any 1-hour period.

Douglas Boyce MOVED and Thomas Hughes SECONDED a motion to amend the finding of fact to delete the words "100 foot" to describe the earthen berms at the limits of excavation. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

REVISED FINDING OF FACT: The applicant's quarry operation will be in such a way that at a minimum the crushers will be operating behind a 100' wide wooded buffer and earthen berms at the limits of excavation. This will assist in mitigation of dust from the operation site to abutting properties. The crushers working within the quarry will require an air emissions license from the Air Bureau of the Maine DEP, these licenses will be provided to the Town prior to operation. In the "Operations Plan Notebook, January 2008" the applicant identifies the procedures to control the migration of dust. The procedures to control dust migration proposed are sweeping, paving, watering, using calcium chloride in accordance with State requirements, or other forms of Best Management Practices on quarry access roads and aggregate piles. The applicant is also proposing to install spraybars on rock crushers working in the quarry. The "Operations Plan Notebook, January 2008" identifies the quarry site supervisor will perform visual opacity determinations and ensure the fugitive emissions do not exceed an opacity of 20% or more for more than 5 minutes in any 1-hour period.

- (c) the applicant has provided a satisfactory plan to visually screen the mining operation from properties adjacent to the area proposed for a reduced buffer. Screening may include maintenance of existing vegetation, growth, or in-fill planting to increase density of vegetation, the placement of an earth berm or other best management practices.

FINDING OF FACT: The applicant has provided a plan to visually screen the mining operations from adjacent properties by leaving existing vegetation and the placement of earthen berms along the northern and western property boundaries. The applicant is proposing to mine no closer than 600' to the southern property boundary. The applicant is proposing to buffer phase 3 from the eastern property line with Mosher Road by conducting quarry-mining operations from west to east so there is always an earthen buffer between the quarry operation and Mosher Road.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to grant the request for a waiver of the buffer from 200 feet to 100 feet along the westerly boundary as far south as the Portland Water District pipe line and along the northern boundary as shown on the drawings. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

Michael Parker MOVED and Thomas Fickett SECONDED a motion to accept the findings of fact as read. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

Ms. Robie noted that a condition of approval should be added stating that the buffer reduction on the southerly side be eliminated up to the Portland Water District pipe line and that a natural no-cut zone shall be retained in the buffer area for the duration of the quarry, except as recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board. –

- b) Excavation shall not extend below an elevation of five (5) feet from the seasonal high water table as established by competent, technical data. A variance from this requirement shall be allowed pursuant to paragraph 490-E, Variance, Performance Standards for Excavation for Borrow, Clay, Topsoil or Silt, 38 M.R.S.A. Sec 490-A-490-M and Article 8, Performance Standards for Quarries, 38 M.R.S.A. Sec. 490-W to 490-EE. The request for variance shall consist of a hydro geologic study and supporting documentation required by the Department of Environmental Protection. The variance shall be reviewed and approved by the Department of Environmental Protection. Planning Board approval shall be conditioned on Department of Environmental Protection approval. No standing water shall be allowed to remain longer than two consecutive calendar weeks unless specifically provided for by the Planning Board.

Ms. Robie brought up the issue of the wetlands in Phase 3 and confirmed with Mr. Stinson that the wetlands have been surveyed. She indicated concern that the wetlands might drain as a result of excavation below the water table. Mr. Stinson said that the applicant may not fill those wetlands, but there is no rule against excavating next to them and that he does not think the excavation in Phase 2 can geologically cause the wetlands to drain. Ms. Robie said her preference is to have a condition of approval requiring that the wetlands be surveyed periodically, and that if they are draining, the wetland area be measured again before being included in the Tier III mitigation requirement. The rest of the Board did not share Ms. Robie's concerns.

FINDING OF FACT: The applicant has proposed not to mine below the seasonal high water table until a variance pursuant to paragraph 490-E, Variance, Performance Standards for Excavation for Borrow, Clay, Topsoil or Silt, 38 M.R.S.A. Sec. 490-A-390-M is approved by Maine Department of Environmental Protection.

There does not need to be a vote on this finding as it is already a condition of approval.

- c) The average slope of any cut bank measured from the top of the slope to the toe of the slope shall not exceed a horizontal to vertical ratio of 2:1; provided, that any gravel pit in lawful operation at the effective date of this ordinance whose slopes exceed this requirement may maintain, but not increase, such nonconforming slopes; provided, further, that for an expanded pit area or new pit area which exceed five (5) acres in size, the slope for such areas may not exceed 3:1. These slope requirements will not apply to a quarry that is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 M.R.S.A. Sec. 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection, except for those extraction operations that occur in any area where a buffer has been reduced under the provisions of Section I, subsection C(5)(a) of this Chapter.

FINDING OF FACT: The applicant has received a permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase I. The quarry will have approximately 40' walls with 5' benches and must be treated in such a manner as to leave them (the walls) in a condition that minimizes the possibility of rock falls, slope failures, and collapse.

Douglas Boyce MOVED and Mark Stelmack SECONDED a motion to accept the finding of fact. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

- d) Hours of operation shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday and 8:00 a.m. to 2:00 p.m. Saturday; provided, however, the Planning Board may extend Saturday hours of operation to 5:00 p.m. if it determines that such extended hours will not unreasonably interfere with neighboring residential uses existing at the time of the request. Where a mineral extraction operation abuts a lot with an industrial operation that uses produce from the mineral extraction operation as part of its manufacturing use, the Planning Board may approve additional hours of operation for the mineral extraction operation so that the hours are consistent with the hours of operation of the abutting industrial use. The extended hours of operation shall be limited to the area of the mineral extraction operation located within one hundred (100) feet of the boundary line of the abutting industrial use lot. This area of the mineral extraction operation shall be included in any site plan or other review for the industrial operation. In no event shall any crushing or screening of materials or mining occur during any extended hours of operation.

FINDING OF FACT: The proposed hours of operation for the quarry are from 6:00 AM to 6:00 PM weekdays and 8:00 AM and 2:00 PM on Saturday. Rock crushing activities will be limited to 7:00 AM to 5:00 PM on the weekdays. The applicant is proposing to install aggregate storage bins on the quarry lot for use by the abutting industrial use (Asphalt Plant), the bins are located within 100' of the boundary line of lot 1 (Asphalt Plant Lot). The applicant is requesting the hours of operation for the quarry within the 100' of the asphalt plant be the same as the asphalt plant (possible 7 days and 24 hours).

Mr. Shaw and the Board discussed the occasional potential for night paving work and the fact that the facility could be busier than if it serves only one contractor. Responding to a query from Mr. Stelmack, Ms. Burns said that the Board could defer discussion on the hours of operation until it discussed the review of the Special Exception Criteria. Mr. Stelmack suggested modifying the second sentence of the finding of fact to read *“are proposed to be conducted.”*

REVISED FINDING OF FACT: The proposed hours of operation for the quarry are from 6:00 AM to 6:00 PM weekdays and 8:00 AM and 2:00 PM on Saturday. Rock crushing activities are proposed to be conducted between 7:00 AM to 5:00 PM on the weekdays. The applicant is proposing to install aggregate storage bins on the quarry lot for use by the abutting industrial use (Asphalt Plant), the bins are located within 100' of the boundary line of lot 1 (Asphalt Plant Lot). The applicant is requesting the hours of operation for the quarry within the 100' of the asphalt plant be the same as the asphalt plant (possible 7 days and 24 hours).

Michael Parker MOVED and Thomas Hughes SECONDED a motion to accept the finding of fact as read and amended. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

- e) All access roads outside the pit within the buffer area prescribed in subsection (a) above of public roads or adjoining property shall be paved and otherwise regularly treated with water or calcium chloride spray to minimize dust conditions.

FINDING OF FACT: The applicant has proposed paving the two quarry access roads approximately 500' at their intersection with Route 237. The applicant has also stated that the access roads may be treated with calcium chloride spray, water, and swept to ensure the minimization of dust.

Douglas Boyce MOVED and Mark Stelmack SECONDED a motion to accept the finding of fact. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

- f) Rock and stone crushing shall be permitted as an accessory use to sand and gravel excavation operations, shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday, and may be prohibited or further restricted by the Planning Board if it will unreasonably interfere with residential uses existing at the time of application. The Planning Board may require water bars on crushing equipment if necessary to control dust. On an annual basis no more than thirty-three percent (33%) of all materials crushed or otherwise processed on the property of such excavation operation may be brought in from a location outside the property.

Mr. Shaw confirmed that materials will be brought on site from outside the property, and the Board amended the finding of fact to reflect that fact. Mr. Hughes confirmed with Ms. Burns that the reason these findings of fact are being voted is because they will become part of the final findings of facts, and most of these operational requirements findings of fact are statements of what will happen, and the findings dealing with hours of

operation also will need to be considered in the Board's review of the special exception criteria. Ms. Burns said that the language in this finding of "The applicant has *stated*..." could be changed to read that the applicant has "*requested*," so that if the Board adopts the finding of fact it has not made a decision that those will be the hours, but has simply accepted that that is the applicant's request. Additionally, the finding of fact needs to reflect that the applicant will bring certain materials onto the site.

FINDING OF FACT: The applicant has stated that the hours of operation for crushing activities will be 7:00 a.m. to 5:00 p.m. Monday through Friday. The applicant and representatives have stated that water bars will be used on the rock crushers. The applicant agrees that on an annual basis no more than 33% of all materials crushed or otherwise processed will be brought onto the site.

REVISED FINDING OF FACT: The applicant has requested that the hours of operation for crushing activities will be 7:00 a.m. to 5:00 p.m. Monday through Friday. The applicant and representatives have stated that water bars will be used on the rock crushers. The applicant agrees that on an annual basis no more than 33% of all materials crushed or otherwise processed will be brought onto the site.

Michael Parker MOVED and Thomas Fickett SECONDED a motion accepting the finding of fact as written and modified in tonight's discussion. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

- g) Erosion and sedimentation on site shall be adequately controlled, based on guidelines of the Cumberland County Soil and Water Conservation District.

FINDING OF FACT: The applicant has made provisions for short term and long-term sedimentation and erosion control and will adhere to MDEP Best Management Practices, which are the same standards used by the Cumberland County Soil and Water Conservation District.

Douglas Boyce MOVED and Michael Parker SECONDED a motion to accept the finding of fact. Motion CARRIED, 6 ayes (Edward Zelmanow absent).

- h) Sufficient topsoil shall be retained to comply with the approved reclamation plan.

FINDING OF FACT: The applicant will retain sufficient topsoil to be used in the reclamation of the benches in compliance with the approved reclamation plan.

Ms. Robie suggested eliminating the word "of the benches;" the Board concurred.

REVISED FINDING OF FACT: The applicant will retain sufficient topsoil to be used in the reclamation in compliance with the approved reclamation plan.

Michael Parker MOVED and Douglas Boyce SECONDED a motion to accept the finding of fact as read and modified.

DISCUSSION: Ms. Robie replied to a question from Mr. Stelmack that the requirement of reclaiming the benches is a DEP requirement for reclaiming quarries.

Motion CARRIED, 6 ayes (Edward Zelmanow absent).

2. SCHEDULE OPTIONAL MEETING IF NEEDED.

Ms. Robie announced that the Board will next meet on this item on Monday, March 24, 2008, at 6:00 p.m. A tentative meeting on Thursday, March 27, 2008, was abandoned as Mr. Shaw indicated that he has a conflict on that date.

Michael Parker MOVED and Douglas Boyce SECONDED a motion to postpone the public hearing until 6:00 p.m., Monday, March 24, 2008. Motion CARRIED, 6 ayes (Edward Zelmanow absent).
[1006 p.m.]

3. ADJOURNMENT

Thomas Fickett MOVED and Michael Parker SECONDED a motion to adjourn. Motion CARRIED, 6 ayes (Edward Zelmanow absent). [10:08 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2008