



Town of Gorham
APRIL 28, 2008
PLANNING BOARD MINUTES

LOCATION: Conference Room A (Room 142), Municipal Center
75 South Street, Gorham, Maine

Members Present:

SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE, VICE CHAIR
THOMAS FICKETT
THOMAS HUGHES
MARK STELMACK
EDWARD ZELMANOW

Staff Present:

DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
WILIAM DALE, ESQUIRE, Town Attorney (7:00 p.m.)
BARBARA SKINNER, Clerk of the Board

Members Absent:

MICHAEL PARKER

The Chairwoman called the meeting to order at 6:06 and read the Agenda. The Clerk called the roll, noting that Michael Parker was absent.

1. APPROVAL OF THE MINUTES FROM MARCH 17, 20, 24, and 31, 2008.

Mr. Hughes commended the Clerk on the work done in the recording and transcription of the minutes. Ms. Robie echoed Mr. Hughes's comments.

Thomas Fickett MOVED and Thomas Hughes SECONDED a motion to approve the minutes of March 17, 2008 as written and distributed. Motion CARRIED, 6 ayes (Michael Parker absent). [6:08 p.m.]

Thomas Fickett MOVED and Mark Stelmack SECONDED a motion to approve the minutes of March 20, 2008 as written and distributed. Motion CARRIED, 5 ayes (Edward Zelmanow abstaining as not having been present at the meeting and Michael Parker absent). [6:09 p.m.]

Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to approve the minutes of March 24, 2008 as written and distributed.
DISCUSSION: Mr. Stelmack asked for clarification of the order of certain findings of fact.
Motion CARRIED, 5 ayes (Mark Stelmack abstaining as not having been present at the meeting and Michael Parker absent). [6:11 p.m.]

Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to approve the minutes of March 31, 2008 as written and distributed.
DISCUSSION: Mr. Stelmack asked for clarification of the approval process of the Findings of Fact, Conclusions and Conditions of Approval for the Brickyard Quarry application. Mr. Stelmack was advised that a motion in the March 31 minutes listing him as absent, even though he was present at that meeting, reflected a memorialization of a vote taken at the March 24 meeting, when he was absent.
Motion CARRIED, 6 ayes (Michael Parker absent). [6:12 p.m.]

2. 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 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 began the proceedings by reminding the Board and the public that this is a permitted industrial use for the zone identified by the application. She said it is the work of this Board to examine the specific criteria of the ordinance for the Industrial Zone and for Major Site Plan approval.

Ms. Robie noted that during the discussion at the Planning Board's April 7, 2008 meeting, the applicant stated that there would most likely be a succession of temporary asphalt plants and operators on the site for an unspecified number of years prior to the installation of a permanent asphalt plant. She said that no conditions of approval regarding the duration of the temporary asphalt plant operation nor technology used either for the temporary or permanent burner have been proposed. She said that prior to the statements of April 7, 2008, all of the conditions of approval have been written and discussed regarding a single, temporary asphalt plant followed by a permanent asphalt plant, and a single partner in a joint venture who would operate the plant. As a result of the applicant's stated intentions, Ms. Robie said she will ask the Board to consider voting on the application in two parts: one for the succession of temporary asphalt plants, and one for the installation of a permanent asphalt plant. She said there has been testimony presented by the applicant and by peer reviewers that asphalt plants vary in noise levels generated and stack emissions. She said it is the role of this Board to attach conditions of approval that it believes necessary to assure that the applicant will meet the applicable performance standards of Chapter II. One of the relevant issues for the Board's consideration is that the Town of Gorham considers this use an industrial use, therefore falling outside the State of Maine's Intent to Comply law for quarries and accessory uses to quarries, and that the Town's ordinances are basically rule based, rather than performance based.

Continuing, Ms. Robie said that the Board has completed making positive findings of facts on the site plan and zone requirements for this use. At the end of the April 7, 2008 meeting, the Board began examining whether the conditions of approval crafted to date for this application assure that the stated use will meet the applicable performance standards of Chapter II. Specifically, the Board was discussing conditions of approval regarding air pollution. For this meeting, Ms. Robie asked that the Board continue its discussion of the performance standards covering air pollution and buffering and that it then review the current conditions of approval to identify any modifications that may be required as a result of the proposed plurality of temporary asphalt plants. Following the Board's determinations, the applicant will be asked to respond, and members of the public who wish to speak specifically regarding the conditions of approval and findings of fact be allowed to do so for a thirty-minute period. After consideration of feedback and any proposed modifications, the Board would then vote on the application.

Mr. Stelmack confirmed that Ms. Robie intended that the Board consider the temporary asphalt plant first and then the permanent plant. Mr. Hughes questioned the need for two votes, saying that there will only be one temporary plant at a time on site. Mr. Fickett said that each temporary asphalt plant has to meet the same state requirements for stack emissions and the same requirements and set of criteria in the Board's conditions of approval regarding noise and emissions. Ms. Robie noted that there is a condition of approval requiring testing within 60 days of an asphalt plant appearing on site. Mr. Hughes said he believes a second vote is unnecessary. Mr. Stelmack said that if there is only one vote, is it clear under the current condition that monitoring must take place within sixty days of full commencement of the asphalt plant. Mr. Zelmanow said that noise monitoring should be done after any temporary asphalt plant is changed, which would be covered by changing "*the* asphalt plant" to "*any* asphalt plant."

Ms. Robie asked Ms. Fossum to explain any complexities that would be introduced by having a series of operators as opposed to one operator. Ms. Fossum replied that she did not believe any of the conditions requires notification to the Town of a change in operator. Mr. Fickett said he believes that notification is provided for because of the requirement to have all the necessary permits for any second asphalt plant going in on the site. Ms. Fossum said that any required reports, specifications if there is a change in the plant itself

and the operator, operations manuals, all must be submitted. She said that condition of approval #2, "That the applicant shall obtain all local, state and federal permits required for the asphalt plant prior to the commencement of site improvements" is an example of additional burden to the applicant when there is a change-out of the operator and the equipment. Mr. Hughes said that any operator must abide by the conditions of approval; Ms. Fossum noted that ultimately the owner of the site is responsible. Ms. Robie recalled that Mr. Shaw had replied that he would be responsible for the asphalt plant and the quarry meeting the criteria.

Mr. Zelmanow suggested delaying the decision on whether to split the vote until after the conditions of approval have been reviewed.

Ms. Robie then directed the Board's attention to the Performance Standards to be sure that there are conditions of approval that cover them, referring to the condition of approval she had proposed at the April 7, 2008 meeting regarding the air pollution Standard on page 128 of the code, which would require the applicant to provide its record of complaints to the Town: Mr. Hughes said he would not recommend the proposed condition, inasmuch as he believes that the applicant is well within the ordinance, no further requirement is necessary, that such a burden would put the applicant in a less competitive position. Mr. Fickett agreed with Mr. Hughes, saying that the dust and noise requirements have already been incorporated in other conditions of approval. Mr. Fickett said he believes that complaints should come into the Town office, where complaints should be kept, and should not be the responsibility of the applicant. Mr. Stelmack concurred with Mr. Hughes and Mr. Fickett, noting that determining the validity of a complaint would be problematic. Ms. Fossum said that typically the Code Enforcement Officer would call a party about whom a complaint has been received. Mr. Hughes noted that Mr. Shaw has said that anyone with a complaint or problem should call him.

Ms. Robie said that conditions of approval have been crafted that when the applicant is required to report issues to the state that the applicant also be required to report them to the Town and she would like to see a similar condition for this issue as well, such as the stack emissions testing reports. Walter Stinson appeared on behalf of the applicant and indicated that every plant that comes on the site will be required to have its own emissions license.

Ms. Robie then turned to page 129 of the Performance Standards, dealing with buffer areas, saying that the one area not discussed is fencing around the asphalt plant. Mr. Stelmack noted that everywhere fencing is mentioned in the code, it is accompanied by "or screening," and suggested that this means one or the other, and the applicant's landscaping has been shown to be adequate. No Board member had an issue with safety of access regarding the asphalt plant.

This then concluded the discussion of the Performance Standards, and the Board moved on to a discussion of the proposed conditions of approval for the asphalt plant.

Standard Planning COA

1. That this approval is dependent upon, and limited to, the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant and that any variation from the approved plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning and Zoning may approve;
2. That the applicant shall obtain all local, state and federal permits required for the asphalt plant prior to the commencement of site improvements;

3. That within ten days of final approval, the applicant shall provide four full sets of the approved plans, sealed and signed by all professionals, to the Town: (1) to the Town Engineer, (2) to the Code Enforcement Officer, (3) to the Compliance Coordinator, and (4) to the Planning Director;

Mr. Boyce suggested eliminating the named individuals; however, Ms. Fossum indicated that the specificity is required for clarity throughout the life of the project and the condition should not be changed. In response to a comment from Mr. Hughes about the Town Council having eliminated the position of Town Engineer, Ms. Fossum noted that the Public Works Director is also the Town Engineer.

4. That the applicant shall provide property line information and site information, in AutoCAD format to the Assistant Planner, prior to the pre-construction meeting;
5. That prior to the commencement of any site construction in the proposed approval; the applicant shall request that the Compliance Manager schedule a pre-constructing meeting between the applicant, applicant's engineer, and Town Staff to review the approved plans, conditions of approval, and site construction requirements;

Mr. Hughes noted that the typographic error of "pre-constructing" should be corrected to "pre-construction."

6. That the applicant shall provide copies of operation manuals and specifications on all proposed asphalt plants to be used on the site to the Town Planner, Code Enforcement Officer, and Town Engineer prior to use;

DISCUSSION: After discussion, the Board changed condition of approval #6 as follows:

REVISED CONDITION OF APPROVAL #6:

6. That the applicant shall provide ~~copies of operation manuals and specifications~~ a copy of the operation manuals and specifications on any asphalt plant to be used on the site ~~all proposed asphalt plants to be used on the site~~ to the Town Planner, Code Enforcement Officer, and Town Engineer at least 14 days prior to use;
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7. That the site improvements shall be completed as shown on the approved plans prior to a request for either temporary or final occupancy permits for the building and asphalt plant; or a performance guarantee covering the remaining site improvements shall be established through the Planning Department;
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8. That all required reports shall be submitted by the applicant to the Town within 14 days of the applicant's receipt of the reports.

DISCUSSION: In order to identify more specifically what reports are to be submitted, the Board changed condition of approval #8 as follows:

REVISED CONDITION OF APPROVAL #8:

8. That all ~~required~~ reports required to be submitted by the applicant to the Town as specified herein shall be submitted ~~by the applicant to the Town~~ within 14 days of the applicant's receipt of the reports.

Fire Department COA

9. That a fire hydrant shall be placed inside the compound in the area of the asphalt plant, with the exact location to be approved by the Fire Chief prior to installation. This hydrant shall be a private hydrant and the rental and maintenance fees shall be the developer's responsibility.
10. That all gas meters (propane or natural gas) shall be protected by bollards;
11. That all above ground fuel storage tanks shall be permitted by the State Fire Marshal's Office and meet all applicable State requirements;
12. That the keys for access control gates should be provided in lock boxes located at the gate entrances with lock box keys provided to the Gorham Fire Department;
13. That no explosives shall be stored on site, unless pre-approved by the Gorham Fire Department and the State Fire Marshal, and the storage meets all Federal and State standards.
14. That the Spill Prevention Countermeasures and Control Plan (SPCC) should be signed and sealed by a professional engineer and the plan shall be reviewed by the Town Engineer, the Code Enforcement Officer and the Town Planner every three years and updated by the applicant as necessary. A copy of the most current plan shall be available in the Code Enforcement office, the Public Works Department, the Planning office, and on site at all times.

Noise COA

15. That the applicant shall ensure installation of "Smart Alarms" on equipment operating on the site;
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16. That the loaders operating within the asphalt plant shall have an exhaust no higher than 2 feet above ground level to meet the required DEP noise standard;

DISCUSSION: Mr. Stinson suggested that condition of approval #16 be eliminated in light of condition #18, which requires that the applicant meet the DEP noise requirements as set forth in Chapter 10. He said that how the applicant meets those standards should be left to the applicant, and this particular condition does not recognize a change in technology which could make this condition inappropriate. Mr. Stelmack agreed with Mr. Stinson, but asked about the origin of the condition. Ms. Robie noted that the Town's noise review engineer, Scott Bodwell, recommended this specific action to ensure that noise levels would be below the required levels, given the model used to project those levels. Mr. Stinson said they might have to do it, but they would prefer not to be restricted to doing it. Ms. Robie said that for the model, specific equipment was used and the exhaust of the loader had to be lowered to meet the standards; however, the condition could be amended to indicate that if a different loader is used which meets the standard without lowering the exhaust, the condition would then be voided.

Mr. Boyce suggested deleting condition of approval #16 and amending condition of approval #19 by including a new sub item 4 which would read "4. After replacement of the loader operating within the asphalt plant." Mr. Stinson concurred with the proposed modification to condition #19 and the Board agreed to delete condition of approval #16.

- ~~16. That the loaders operating within the asphalt plant shall have an exhaust no higher than 2 feet above ground level to meet the required DEP noise standard;~~

16. That the applicant and/or the asphalt plant operator shall comply with the provisions of the OPERATIONS PLAN NOTEBOOK dated January 2008 and amended March 2008 submitted as part of the site plan application;

DISCUSSION: The Board concurred that the condition should include both the applicant and the operator, particularly as there may be more than one asphalt plant operator, so the “/or” should be eliminated in the newly numbered condition of approval #16.

REVISED CONDITION OF APPROVAL #16:

16. That the applicant and~~or~~ the asphalt plant operator shall comply with the provisions of the OPERATIONS PLAN NOTEBOOK dated January 2008 and amended March 2008 submitted as part of the site plan application;
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17. That the applicant shall meet the Maine Department of Environmental Protection noise requirements as set forth in Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law), as stipulated by the letter from Walter P. Stinson, P.E. of Sebago Technics to Deborah F. Fossum, dated August 23, 2007;
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18. That the applicant shall conduct noise monitoring at the following times:

1. Within 60 days from the commencement of outside sales of materials from the quarry and when all noise-contributing equipment is operating;
2. Within 60 days after the commencement of full operation of the asphalt plant;
3. After replacement of the temporary asphalt plant.

Such noise monitoring shall be conducted in accordance with the requirements set forth in the letter from R. Scott Bodwell, P.E., Resource Systems Engineering, to Deborah Fossum, Town Planner, dated February 19, 2008, and hereby incorporated by reference. Sound levels shall be measured at nearby protected locations to ensure that the sound levels meet Section 10 of Chapter 375 of the Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law). Monitoring required under this condition may be conducted by the Maine DEP or by a private noise consultant funded by the applicant. The applicant shall provide all testing results to the Town Engineer and the Code Enforcement Officer within the established 60-day monitoring period;

DISCUSSION: Mr. Stelmack recommended changing the word “testing” to “monitoring in the last sentence in the paragraph above. Returning to its earlier discussion, the Board adopted new sub item #4, to include replacement of the loader operating within the asphalt plant. It was agreed that the loader operating on site at start-up will need to comply with condition of approval #18 and it would only be mitigated if it needs to be. Mr. Dale suggested the addition of the words “any and all” before “temporary asphalt plant,” as well as adding an s in parenthesis to provide for plurality of plants.

REVISED CONDITION OF APPROVAL #18:

18. That the applicant shall conduct noise monitoring at the following times:

1. Within 60 days from the commencement of outside sales of materials from the quarry and when all noise-contributing equipment is operating;
2. Within 60 days after the commencement of full operation of the asphalt plant;
3. After replacement of any and all ~~the~~ temporary asphalt plant(s) and after the replacement of any and all permanent plant(s).
4. After replacement of the loader operating within the asphalt plant.

Such noise monitoring shall be conducted in accordance with the requirements set forth in the letter from R. Scott Bodwell, P.E., Resource Systems Engineering, to Deborah Fossum, Town Planner, dated February 19, 2008, and hereby incorporated by reference. Sound levels shall be measured at nearby protected locations to ensure that the sound levels meet Section 10 of Chapter 375 of the Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law). Monitoring required under this condition may be conducted by the Maine DEP or by a private noise consultant funded by the applicant. The applicant shall provide all monitoring ~~testing~~ results to the Town Engineer and the Code Enforcement Officer within the established 60-day monitoring period;

19. That the applicant shall conduct subsequent testing on a complaint basis or as part of the Maine DEP's monitoring of the quarry. Additional testing shall be required when the asphalt plant is replaced. Results of all subsequent testing shall be provided to the Town Engineer within 14 days. Testing shall be conducted in accordance with the requirements of Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);

DISCUSSION: Mr. Stelmack noted that everywhere the word "testing" occurs should be changed to "monitoring," and the first sentence should read "noise monitoring." Mr. Zelmanow suggested that the second sentence, dealing with additional testing being required when the asphalt plant is replaced, is redundant.

REVISED CONDITION OF APPROVAL #19:

19. That the applicant shall conduct subsequent noise monitoring ~~testing~~ on a complaint basis ~~or~~ as part of the Maine DEP's monitoring of the quarry and asphalt plant. ~~Additional monitoring testing shall be required when the asphalt plant is replaced.~~ Results of all subsequent monitoring ~~testing~~ shall be provided to the Town Engineer ~~within 14 days~~ (see Condition of Approval #8). ~~Testing~~ Monitoring shall be conducted in accordance with the requirements of Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);
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20. That the applicant shall work with the Town to seek a "no engine brake" ruling from the Maine Department of Transportation;

DISCUSSION: Ms. Robie suggested specifying the physical location for the ruling.

REVISED CONDITION OF APPROVAL #20:

20. That the applicant shall work with the Town to seek a "no engine brake" ruling for Route 237 from the Maine Department of Transportation;
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MDEP Permit COA

21. That the applicant and/or asphalt plant operator shall provide copies of all federal and state air emissions licenses for the asphalt plants used on lot 1 to the Town Engineer and Code Enforcement Officer, prior to start of production of construction material;

DISCUSSION: The Board was unanimous in eliminating the asphalt plant operator in this condition. Based on discussion, Mr. Zelmanow suggested the following modifications to condition of approval #21: addition of the words "any and" before "all federal and state air emissions licenses." Mr. Dale suggested changing the wording "production of construction material" to "operations."

REVISED CONDITION OF APPROVAL #21:

21. That the applicant ~~and/or asphalt plant operator~~ shall provide copies of any and all federal and state air emissions licenses for the asphalt plants used on lot 1 to the Town Engineer and Code Enforcement Officer, prior to start of ~~production of construction material~~ operations;
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MDEP Inspection Reports and Monitoring COA

22. That the applicant shall submit copies of all construction inspection reports required as part of Maine Department of Environmental Protection permitting to the Town Engineer and Code Enforcement Officer;
23. That the applicant shall maintain on site copies of all required visual and laboratory monitoring of stormwater samples as required by the Multi-Sector General Permit and must provide to the Town Engineer and Code Enforcement Officer any report of deviations required to be submitted to the DEP;
24. That the applicant shall submit copies of all Maine Department of Environmental Protection site inspections reports to the Town Engineer and Code Enforcement Officer;

NEW CONDITION OF APPROVAL #25:

25. That the applicant shall submit copies of all Maine Department of Environmental Protection air quality emissions test discrepancies to the Town Engineer and Code Enforcement Officer;

Traffic COA

26. That no certificate of occupancy shall be issued prior to the completion of all required roadway improvements as set forth in the MDOT Driveway Permits and detailed in the MDOT final approved construction drawings;
27. That no more than one truck shall be allowed to remain on the State Route 237 widened shoulders prior to the opening of the gate to the asphalt plant in the morning and no queuing shall occur in the State Route 237 shoulder area;
28. In the event that the MDOT permit requires substantive changes to the approved site plan, the applicant will return to the Planning Board for an amended approval;

PLBD COA

29. That the applicant shall amend the plan to include a note that the applicant has determined that there are no vernal pools on the site;
30. That the applicant shall provide OSHA approved painted walkways between the scale house and the control house as well as any other locations required by OSHA;
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31. That the applicant shall provide the deeds for the asphalt plant lot and quarry lot and all applicable utility, drainage, and access easements for review and approval prior to the scheduling of the pre-construction meeting;

DISCUSSION: Shawn Frank asked that the language of this condition of approval be changed to mirror the same language crafted for the quarry.

REVISED CONDITION OF APPROVAL #31:

31. That the applicant shall provide the deeds for the asphalt plant lot and quarry lot and all applicable utility, drainage, and access easements for review and approval of the documents by the Town Attorney prior to the scheduling of the pre-construction meeting;

32. That the applicant shall be required to return to the Planning Board if the footprint or location of buildings changes from what is shown on the site plan;

DISCUSSION: Mr. Hughes asked what would happen if a change is smaller than the footprint shown. Ms. Fossum said the applicant would need to return to the Planning Board if the footprint is larger or if it is reoriented. Mr. Dale suggested that the condition of approval be modified as shown.

REVISED CONDITION OF APPROVAL #32:

32. That the applicant shall be required to return to the Planning Board if either the footprint or location of buildings changes, other than a de minimis change as determined by the Planning Director, from what is shown on the site plan;

33. That any permanent structure on the site visible from the public way and/or nearby residences shall be constructed of materials conducive to blending with the environment and shall be of a neutral palette so as to blend as far as possible with the natural surroundings. This Condition of Approval applies to the permanent asphalt plant. There shall be no signage on the silos;

34. That the applicant shall replace the forward throw lights shown on the plan with lights that have a greater cut off;

DISCUSSION: In order to be more precise, Mr. Boyce suggested changing the phrase “lights that have a greater cut off: with “horizontal flat lens fixtures.” The Board concurred.

REVISED CONDITION #34:

34. That the applicant shall replace the forward throw lights shown on the plan with ~~lights that have a greater cut off;~~ horizontal flat lens fixtures;

35. That the applicant shall provide an amended schedule of proposed improvements;

DISCUSSION: In order to establish clarity, the Board added the words “and costs: to the Condition.

REVISED CONDITION #35:

35. That the applicant shall provide an amended schedule of proposed improvements and costs;

36. That the applicant shall maintain a continuous buffer between the public right of way and the asphalt plant operations throughout the life of the plant;
(Revised, see page 10)

37. That copies of the required stack emissions tests shall be provided to the Town Engineer and Code Enforcement Officer.

DISCUSSION: The condition was amended for clarity.

REVISED CONDITION OF APPROVAL #37:

37. That copies of the required Maine Department of Environmental Protection stack emissions tests shall be provided to the Town Engineer and Code Enforcement Officer (see Condition of Approval #8);

Recording Decision Document COA

38. That these conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board approval and a dated copy of the recorded Decision Document shall be returned to the Town Planner.

Ten Minutes Stretch Break to 8:25 p.m.

PUBLIC COMMENT PERIOD OPENED: John Shaw, Shaw Brothers, thanked the Board for its hard work on the application on behalf of his brother and himself. Mr. Shaw said he believes that the project will be a plus for the State of Maine and the Town will be happy and proud of it.

Russell Sprague, 184 Libby Avenue: Commented that condition of approval #33 contains no guarantee that the color of the asphalt plant will not be objectionable. Questioned the “continuous buffer” wording of condition #36 as being too vague. Said he believes that the Board has done very little to address the concerns of the public, particularly in its treatment of noise, odor and emissions. Accused the Board of “folding” in the face of objections by the applicant. Mr. Hughes spoke in defense of the Board’s actions and said that the conditions of approval reflect the Board’s awareness of the abutters’ concerns.

Theresa Dolan, 309 Mosher Road: Commented that the Town lacks appropriate ordinances to attract with appropriate economic development.

Hans Hansen, South Gorham: Commended the Board on the job it has done. Said that condition of approval #6 concerning the providing of manuals is onerous, a copy should be kept on site for review by the Code Enforcement Officer and Town Engineer. Said that taking #16 out is a good idea and #22 is repetitious. Indicated that the Shaw Brothers logo should be permitted on the silos.

PPUBLIC COMMENT PERIOD ENDED. [8:40 p.m.]

Based on the public’s comments, Mr. Stelmack suggested tightening condition of approval #36. Mr. Dale noted that standard condition of approval #1 will be applied to require the applicant to comply with the proposals and plans contained in the application and the supporting documents submitted. Discussions with Mr. Dale and the Board resulted in amending condition of approval #36 as follows:

36. That the applicant shall maintain a continuous vegetated buffer between the public right-of-way and the asphalt plant operations throughout the life of the plant; provided, however, to the extent buffering is currently provided by existing buildings, if and when some or all of those buildings are torn down, their buffering shall be replaced, on the same linear foot basis, by a continuous vegetative buffer;

Mr. Zelmanow asked how many complaints would be required to trigger subsequent noise monitoring in condition #19; Ms. Robie said she believes that that condition was written in the event the DEP required

additional noise monitoring as a result of complaints that they receive. Mr. Stinson said his recollection was that if there were complaints to DEP they could come out to respond or they would come out during their normal periodic review, and the applicant was required to do the start-up monitoring. Mr. Dale recommended keeping the condition as a means of allowing the Town, which will be more sensitive to abutters' concerns, to enforce it. Mr. Dale further agreed with Mr. Stelmack that an additional sentence should be added that if the state does not do any of that testing, the Town can do it to the same standards. Mr. Zelmanow suggested rewording the condition as follows:

19. Any subsequent noise monitoring conducted on a complaint basis or as part of the Maine DEP's regular monitoring of the quarry and asphalt plant shall be provided to the Town Engineer and Code Enforcement Officer (see Condition of Approval #8). Monitoring shall be conducted in accordance with the requirements of Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law). To the extent that the Maine DEP fails to undertake noise monitoring, the Town of Gorham may do so pursuant to this standard;

Mark Stelmack MOVED and Thomas Hughes SECONDED a motion to accept the conditions of approval as discussed with the applicant and amended this evening. Motion CARRIED, 6 ayes (Michael Parker absent). [9:05 p.m.]

Mark Stelmack MOVED and Douglas Boyce SECONDED a motion to grant approval of the applicant's request to construct a hot mix bituminous asphalt batch plant on Map 31, Lot 15, with conditions of approval as posted prior to the meeting and discussed with the applicant and as modified this evening.

DISCUSSION: Ms. Robie said she appreciated the hard work of the Board, the public input and the hard work of the applicant, that this was a difficult application, that the ordinances do not allow the Board to do any more than has been done, and that the Board has done everything it could do to mitigate the effects on the abutters.

Theresa Dolan returned to the podium to say that those who opposed the project understood the Board's position and as a whole the project is better than it was initially as a result of the work of all sides. Mr. Stinson said that in the thirty years of his experience he has never seen an application more carefully reviewed and under more scrutiny than this one. He too praised the Board for the job it has done.

Motion CARRIED, 6 ayes (Michael Parker absent). [9:10 p.m.]

3. ADJOURNMENT

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion to adjourn. Motion CARRIED, 6 ayes. [9:11 p.m.]

Respectfully submitted,

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