



Town of Gorham
June 1, 2009
PLANNING BOARD MINUTES

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

Members Present:

**SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE, Vice Chairman
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 SKINNER, Clerk of the Board**

The Chairwoman called the meeting to order at 7:07 p.m. and read the 11-item agenda. The Clerk called the roll, noting that everyone was present.

1. APPROVAL OF THE MAY 18, 2009 MINUTES

Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to approve the minutes of May 18, 2009 as written and distributed. Motion CARRIED, 5 ayes (Susan Robie and Edward Zelmanow abstaining as not having been present at the meeting). [7:10 p.m.]

2. COMMITTEE REPORTS

- A. Ordinance Review Committee** – Ms. Robie reported that this Committee has not met since the last Planning Board meeting.
 - B. Sign Ordinance Sub-Committee** – Ms. Robie reported that this Sub-Committee has not met since the last Planning Board meeting.
 - C. Streets and Ways Sub-Committee** – No report.
-

3. ADMINISTRATIVE SITE PLAN REPORT

Ms. Fossum reported that one new Administrative Site Review application has been received, for Ossipee Trail Motors on Route 25, who wish to expand their building. She confirmed to Ms. Robie that there are no changes to the three other applications, which are continuing to move very slowly.

4. CONSENT AGENDA

JED ASSETS, LLC – MASTER SIGN PLAN – 8 ELM STREET

Request for approval of a Master Sign Plan at 8 Elm Street. Zoned UC (M102 / L161).

Ms. Robie explained that this item is administrative in nature and has been recommended for approval by the staff. It will not be discussed unless a specific request is made, either by a Board member or a member of the public, to remove it from the Consent Agenda.

There being no requests,

Edward Zelmanow MOVED and Mark Stelmack SECONDED a motion to grant approval of the item on the Consent Agenda with proposed conditions of approval.

Discussion: Ms. Robie confirmed with staff that the applicant has agreed to the Conditions of Approval.

Motion CARRIED, 6 ayes (Douglas Boyce abstaining). [7:12 p.m.]

5. PUBLIC HEARING (continued)

SITE PLAN/SPECIAL EXCEPTION - GORHAM ELEMENTARY SCHOOL -- OFF SEBAGO LAKE ROAD – BY GORHAM SCHOOL DEPARTMENT.

Request for Site Plan & Special Exception approval of a 550 student elementary school on the Stevens Farm off Sebago Lake Road with associated site improvements. (Zoned Rural and Suburban Residential; Map 53 / Lot 38 and Map 71 / Lot 1).

Ms. Robie noted that the applicant has requested that this item be postponed to a subsequent meeting.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to postpone the public hearing to the meeting scheduled for July 6, 2009.

Discussion: Mr. Boyce asked staff if the applicant would be ready to appear before the Board later in June if a second meeting is scheduled. Ms. Fossum said she believes that the applicant would like to appear at a second June meeting. Mr. Boyce suggested adding wording to postpone the item to a second June meeting should one be scheduled. Mr. Parker agreed to modify his motion; the seconder concurred as well.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to postpone the public hearing to a second meeting in June if one is scheduled or to the meeting scheduled for July 6, 2009. Motion CARRIED, 7 ayes. [7:15 p.m.]

6. PUBLIC HEARING

AMENDMENT TO MINERAL EXTRACTION PERMIT APPLICATION – BY SHAW BROTHERS CONTRUCTION, INC. – “BRICKYARD QUARRY” - REVIEW OF A HYDROGEOLOGICAL STUDY

Request for approval of an amendment to the Mineral Extraction Permit application for the Brickyard Quarry for review of a hydrogeological study submitted by Shaw Brothers Construction, Inc. (Zoned Industrial, Map 31 / Lots 12 -15).

At the Chairwoman’s request, Natalie Burns, Town Attorney, explained that the Superior Court has issued its decision in the case *Concerned Citizens of Gorham v. Town of Gorham*, which was a Rule 80B Appeal of the Board’s prior approval of the Brickyard Quarry. Two issues were decided by the Court in that appeal: one had to do with whether the use itself was consistent with the requirements of the Comprehensive Plan; the Court found that it was acceptable under the terms of the Comprehensive Plan. The second issue was a general appeal as to whether the Board had committed an error in its determination that the application met all of the submission requirements, particularly as to the requirement for a site plan showing depth to groundwater and a hydrogeological report showing that there would not be pollution to the groundwater. In this instance, the Court found that in fact those things had not been submitted as required by the Ordinance and that the Board’s Condition of Approval that allowed them to be submitted after the fact was not appropriate. Therefore, the Superior Court vacated the decision, which had the same legal effect as would a motion by this Board to reconsider – it takes the application back to where it was immediately prior to the Board’s vote. The decision by the Superior Court contained a footnote that made it clear that the applicant did not have to file a new application to come back before the Board, that in fact the applicant could choose to submit additional information for the Board’s review without resubmitting its entire application. The Board has before it tonight an amended quarry application that provides additional information on the items identified as being deficient by the Superior Court, which the Board will consider tonight and on which it will have a public hearing. They are the site plan showing the depth to groundwater and the hydrogeological report concerning the impact on groundwater. Ms. Burns noted that the Concerned Citizens raised the issue as to whether the hydrogeological report is sufficient concerning the impact on surface water, but the Court determined that the applicant had submitted sufficient information on that issue, which therefore is not to be addressed this evening by the Board.

Responding to a question from Mr. Parker, Ms. Burns said there is an appeal period within 21 days of the Court's action, which period runs on Wednesday, June 3. So if the Board were not to act this evening, either side might have to bring an appeal to the Law Court to protect its rights; however, at this time no one has brought an appeal. Ms. Burns said that James Cloutier, attorney for Concerned Citizens of Gorham, has sent a letter to one of the members of that group, indicating in his opinion that the application cannot be heard because the appeal period has not run yet. Ms. Burns said she disagrees with that opinion, that the Court was quite clear that the applicant could come back before the Board and amend its application to correct the deficiencies identified in the prior decision. Furthermore, Ms. Burns said that as a matter of general law, even though something has been appealed to Superior Court, that does not mean there cannot be amendments to an application that are brought before a board while that is proceeding.

Ms. Robie confirmed with Ms. Burns that there is only one subject on which comments and discussion will be conducted, and that is the adequacy of the hydrogeological study submitted, the adequacy of that study in determining where the groundwater is located, and what will be done to assure the quality of that groundwater.

Walter Stinson, Sebago Technics, appeared on behalf of the applicant, Shaw Brothers Construction and introduced Danny Shaw and Chris Cloutier of that firm, Don McFadden of MAI Environmental, and Shawn Frank of Sebago Technics. Mr. Stinson said the Court said that the hydrogeological study did not address the elevation of the groundwater table, or depth to groundwater, and supplemental information has been provided dealing with issue. Mr. Stinson demonstrated two plans showing the groundwater elevations and depths to groundwater which they believe meet the ordinance requirements. Mr. Stinson also referred to the written report prepared by MAI Environmental and provided to the Board and staff. He said this report provides a discussion of the geology in the area, the wells that have been placed on site and water quality data which has been gathered to date over a period of nine months.

Mr. Stinson told the Board that the third monitoring well has been installed as required in the Board's original Condition of Approval #35 of its approval of the quarry; the MAI report addresses the installation of that well and the findings from drilling the well. Mr. Stinson said that the hydrogeological report submitted is the study required by the Town of Gorham and limits excavation to no closer to the groundwater table than 5 feet; excavation cannot go closer to the groundwater table than 5 feet until a variance from this requirement has been secured from DEP permit. Mr. Stinson said the Phase II quarry approved by the Board showed a bottom elevation of 114. Under the current scenario, the bottom elevation at the highest part of the site on the westerly side is elevation 135 – the elevation 130 feet plus five feet above that, as shown on the drawing being demonstrated to the Board. He said that any excavation beneath the groundwater table should be under the purview of the DEP.

Ms. Robie concurred with Mr. Stinson's statement about going within 5 feet of the groundwater. She said that the issue tonight is whether or not the groundwater contours and depths have been adequately determined by the wells that are in existence. Mr. Stinson said that they believe they have demonstrated what is required. In response to a query from Mr. Fickett, Mr. Stinson said that their predicted model is a reasonable approximation as it was based on three known water elevations at the Presumpscot River and Mosher Brook and a section already blasted by Shaw Brothers for their stormwater pond.

Ms. Robie confirmed what is required tonight by reading from page 104 of the Code: "... the following additional submissions are required: (a) A hydro geological 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." Ms. Robie noted that the language applies to a quarry as well as a gravel pit.

Ms. Fossum gave the staff comments, noting that the submissions made by the applicant have been provided to R.W. Gillespie & Associates for peer review. The Board has been provided with the peer review report, as has the applicant. Certain recommendations were made in the peer review report, and staff has converted those recommendations to proposed Conditions of Approval for discussion tonight. In addition, a draft of revised findings of fact and conclusions has been provided to the Board. In order to act tonight, the Board will be required to adopt additional Conditions of Approval and to make additional findings of fact based on the new information provided; these findings and Conditions will be incorporated into the original findings that the Board made in March of 2008.

Ms. Robie said that for consideration by the Board is the hydrogeological study provided by Sebago Technics, R.W. Gillespie & Associates' independent assessment of that study, and an assessment by John Rand, hydrogeologist retained by the Concerned Citizens, of both of those documents. Ms. Robie asked that the Town's consultant, Robert Gillespie, address the Board and compare some of the information provided by Mr. Rand, Sebago Technics and Mr. Gillespie's own data. Mr. Parker and Mr. Stelmack concurred. Mr. Stelmack asked that the applicant also demonstrate that the quarry operation will not "cause any pollution to ground water..." as dictated by the Code.

Mr. Stinson returned to the podium to discuss what the applicant is doing to avoid polluting ground water, noting that quarrying will be working 5 feet above predicted ground water table level and an extensive spill prevention control and countermeasures plan was established as part of their original application. He said that the Court was satisfied that sufficient information had been presented dealing with pollution of surface water. He quoted from the MAI report that "...At full buildout, the proposed bottom elevation of quarry will be well below the elevation of the observed water bearing fractures in the bedrock monitoring wells." Continuing, Mr. Stinson quoted "Based on our experience with similar quarries in the state the fact that there were no drinking water wells identified within 1000 feet of the quarry and presence of a near vicinity public water supply distribution main, it is not anticipated that Brickyard Quarry will cause unreasonably adverse impacts to ground water flow patterns or have unreasonable adverse impacts on ground water quality." Mr. Stinson concluded that for these reasons they do not believe that there will an impact on the ground water table or its quality. Mr. Stelmack pointed out that the fact that there are no drinking wells identified within 1000 feet of the quarry doesn't mean that the quarry will not cause ground water contamination or pollution but did agree that staying 5 feet above the groundwater and the SPCC plan were important elements in protecting the ground water. At Mr. Stelmack's request, Mr. Stinson explained that water quality data is now being gathered for the DEP variance, that the Department requires a 12-month period of water quality testing, that it has been done for the last 9 months and that there is one more round to go. That information will be submitted as part of their variance application to the DEP.

Rob Gillespie came to the podium and introduced himself to the Board. He is principal geotechnical engineer with R.W. Gillespie & Associates out of Saco, Maine. The firm performed the peer review of the MAI hydrogeological study, reviewing the data that had been made available as well as other data gathered such as the MAI letter which the Court found not in substantial compliance, MAI's second document, and did some research on certain contaminants that can come from blasting compounds. The conclusion was that the ground water contour map was a reasonable approximation, taking into consideration that the site has been thoroughly deranged by the former brick company occupying the site and by Shaw Brothers in their operations to date to begin quarrying. Any realistic contour map of a ground water table in the overburden is an exercise in futility, but to get a ground water contour map in the shallow bedrock would probably be close to what has been provided. He said that had his firm done the work there might possibly have been a different interpretation, the contours might be been done slightly differently, but in essence the result would have been the same with probably slightly differently shaped contours.

Mr. Gillespie discussed the three test wells that have been installed and the data provided, and discussed the conclusions from his letter of May 26, 2009, attached hereto and incorporated as a part herein. He said the water quality was reviewed and suggested that the wells be thoroughly purged for the last round of DEP-required testing. Mr. Gillespie said that his firm would take no exception to a floor of 130 feet at the high wall. He suggested that the quarry floor be monitored as it progresses downward. He also mentioned the contaminants yielded from certain blasting compounds and suggested that testing for the ground water suite include chloride nitrite and perchlorate. Also recommended was testing of ground water every two months for the first year immediately prior to and within 5 days after each production shot and three times a year thereafter if there are to be 4 to 6 shots per year. He also suggested that ground water be sampled at six months intervals. After the first year, testing should be done twice a year provided there are no strong indicators of impact to ground water quality. Mr. Gillespie said that the additional well he had initially suggested is not practical.

Mr. Parker and Mr. Gillespie discussed the meaning of the word "potentiometric" or how far the water will rise once it is released, with the water trying to flow out of the rock. Mr. Gillespie said there is a low probability that the surrounding groundwater will be contaminated and that generally speaking the contaminants are low level. Mr. Gillespie explained to Mr. Parker that floor stability should be monitored by the applicant's hydrogeologist, as required by DEP and mine safety.

Mr. Gillespie indicated that he did not agree with the conclusion expressed by Mr. Rand for monitoring wells outside the excavation area to monitor groundwater for the life of the quarry due to the uncertainty involved in capturing information based on rock fractures. Mr. Gillespie said he is comfortable with the quarry floor at elevation 130 feet above mean sea level as the limit, provided that the Town and the quarry operator exercise due diligence in the operation of the quarry and monitoring of the ground water.

Mr. Boyce asked Mr. Gillespie if the State of Maine is looking at promulgating regulations on chloride nitrite and perchlorate. Mr. Gillespie replied that to his knowledge, only Massachusetts, Connecticut and Vermont are considering such regulations and DEP does not have a position on these contaminants, nor does the EPA regulate them at this time, although EPA has issued an interim health advisory on perchlorate. The Board discussed at length with Mr. Gillespie whether to require that the applicant test for chloride nitrite and perchlorate, the lack of state standards and the value of such testing. Mr. Gillespie noted that changing the blasting compound would eliminate any of the contaminants, were they to be found.

Mr. Gillespie and Mr. Stelmack discussed DEP's requirements for granting or not granting a variance to mine below the ground water table. DEP will also require water monitoring twice a year, which will be permanent, unless results warrant a waiver being requested to drop the testing to once a year or to discontinue it.

Ms. Robie and Mr. Gillespie discussed the proposed Conditions of Approval that had been created, based on Mr. Gillespie's recommendations. Mr. Gillespie indicated he now would no longer require the additional test well; the second recommendation remains unchanged as to purging the test wells and monitoring for chloride nitrite and perchlorate; that Condition #3 should be changed to measuring ground water levels three times the first year, irrespective of production shots; after the first year, monitoring should be done twice a year, preferably spring and fall; that the condition regarding the blasting plan should be eliminated; that the applicant's own hydrogeologist should perform the monitoring as the quarry floor progresses down; and that the quarry floor shall be no lower than elevation 130 feet above mean sea level. Mr. Gillespie recited to Mr. Stelmack what parameters should be used in proposed Condition #2, which are known as DEP's laboratory testing suite. Mr. Gillespie responded to Ms. Robie that he recommends purging the test wells before every measurement, and replied to Mr. Stelmack's query that all three wells should be monitored and the DEP monitoring period refers to the baseline period

which ends in June. Mr. Gillespie said the DEP would thereafter require testing twice a year unless there is a reason not to.

Ms. Robie recited the currently proposed Conditions of Approval as follows:

1. That the applicant shall thoroughly purge the test wells before every sampling and testing round, and shall monitor for the DEP laboratory testing suite and shall monitor for chloride nitrite, and perchlorate, the levels of which shall be compared to either proposed or current EPA standards;
2. That after the MDEP monitoring period has concluded, groundwater levels should be measured and groundwater tested three times a year during the first year and after the first year, two times per year, in the spring and fall;
3. That applicant's own hydrogeologist shall evaluate the influences and of the potentiometric surface on groundwater as the quarry floor progresses downward with the acquisition of additional data from existing sources and keep a log; and
4. That the quarry floor shall be no lower than 130 feet elevation during Phase I.

Mr. Gillespie concurred with the Conditions as Ms. Robie stated them.

Ten Minute Stretch Break to 9:10 p.m.

Michael Parker MOVED and Mark Stelmack SECONDED a motion to waive the 10:00 o'clock rule. Motion FAILED 2 ayes (Michael Parker and Mark Stelmack) and 5 nays (Douglas Boyce, Thomas Fickett, Thomas Hughes, Susan Robie and Edward Zelmanow). [9:15 p.m.]

Failure to waive the 10:00 o'clock rule means that the Board will therefore not take up any new items after 10:00 o'clock.

The Board agreed that there should be a second meeting in June, on the 22nd, in order to hear the items which will not be heard this evening because of the observance of the 10:00 o'clock rule.

PUBLIC COMMENT PERIOD OPENED: Jennifer Everett, 184 Libby Avenue. Asked for an explanation of how ground water travels and expressed concern about possible contamination of drinking water wells, rivers and brooks nearby from explosives used during excavation above the water table.

Theresa Dolan, 309 Mosher Road, asked if comments can be made about impact on groundwater during Phases II and III. Ms. Burns replied that excavation will be below the water table during Phases II and III, the ordinance looks to DEP to take care of those operations and will be under the purview of the DEP. Ms. Dolan said she does not believe enough monitoring has been done when blasting was done or will be done and perhaps it would have been better had more monitoring been done earlier.

Mr. Gillespie replied to Ms. Everett's comments saying that there is a possible low probability of contamination during excavation above the water table and contamination of rivers and streams also is a low probability. Mr. Gillespie also commented that alteration to the site began with the original brickyard, and had the site not been disturbed, a shallow bedrock ground water contour map might have been secured. Ms. Everett asked for clarification on whether ground water goes to water bodies; Mr. Gillespie replied that with the available information, he believes that the near surface bedrock and what is left of the overburden aquifer ultimately discharge to the streams and to the river to the east; the

underflow or major flow, does not appear to do that but continues on as it is too deep to express itself in the river and may underflow out to the coast.

Ms. Dolan came back to the podium to ask Mr. Gillespie if the size of a blast impacts the amount of contaminants that could impact the groundwater, and if it does, is there a way that the size of those blasts can be controlled. Mr. Gillespie replied that blasts are geared toward rock type, rock hardness, fracture pattern and frequency; the less explosive that can be used to obtain the maximum result, the better.
PUBLIC COMMENT PERIOD ENDED.

The Board returned to its consideration of the proposed Conditions of Approval, and after significant discussion among the Board members, Mr. Gillespie, the applicant and the applicant's hydrogeologist, the Conditions were further modified and finalized. Even though Mr. Gillespie recommended testing for chloride nitrite and perchlorate three times the first year and then dropping the testing requirement if they do not appear, the requirement for testing for chloride nitrite and perchlorate was abandoned; a poll of the Board on the issue of requiring such testing be done by the applicant resulted in three votes in favor (Boyce, Robie and Zelmanow) and four votes against (Fickett, Hughes, Parker and Stelmack). Although MAI has used low flow flushing of the test wells, the Board decided that the wells should be purged for the last quarter of background testing. Due to a change in the information submitted by the applicant, Mr. Gillespie recommended changing the quarry floor parameters to no lower than elevation 135 feet above mean sea level at the west side and elevation 120 feet above mean sea level at the east side of the quarry during Phase I.

Ms. Burns noted that pursuant to the Court's order, the Board must find that the hydrogeologic study demonstrates that there will not be pollution caused to the ground water, which the peer review is meant to address. Because the ordinance has no specific standard as to what causes pollution to the ground water, the Board is going to have to adopt some testing measurement, and the Court was clear that the Board cannot rely on DEP to do it, particularly as to Phase I where there is no DEP review required. That standard must be put into the Conditions of Approval as to exactly what testing is required, how often it is required, and to whom it gets submitted for Phase I. Ms. Burns emphasized that the Board cannot say that complying with DEP testing requirements is sufficient. She also noted that similar conditions will have to be imposed on other similar projects going forward.

Therefore, the finalized Conditions are as follows:

1. That the applicant shall thoroughly purge test wells before every sampling and testing round;
2. That after the DEP monitoring period has concluded, groundwater levels and water quality tests shall be measured three times per year for the first year according to the current DEP suite of tests and twice a year thereafter in the spring and fall until the quarry is operating under a variance from the MDEP to go below groundwater;
3. That the applicant's own hydrogeologist shall evaluate the influences of the potentiometric surface on groundwater as the quarry floor progresses downward after each round of groundwater level measurements with the acquisition of additional data from existing sources and keep a log, with results being provided to the Town; and
4. That the quarry floor shall be no lower than elevation 135 above mean sea level at the west side and elevation 120 above mean sea level at the east side of the quarry during Phase I.

Michael Parker MOVED and Thomas Hughes SECONDED a motion to accept the four Conditions of Approval as read. Motion CARRIED, 7 ayes. [11:15 p.m.]

Mark Stelmack **MOVED** and Douglas Boyce **SECONDED** a motion to accept the addendum to the Brickyard Quarry Planning Board decision, Findings of Fact and Conclusions revised June 1, 2009. Motion **CARRIED**, 7 ayes. [11:20 .p.m.]

Michael Parker **MOVED** and Douglas Boyce **SECONDED** a motion to amend and readopt the original Findings of Fact and Conclusions and Conditions of Approval for the Brickyard Quarry and License to Blast dated March 31, 2008, with the preceding Conditions of Approval inserted under "Hydrogeological Conditions of Approval" between Conditions #35 and 36 as discussed with the applicant. Motion **CARRIED**, 7 ayes. [11:21 p.m.]

7. PUBLIC HEARING

GRAVEL PIT AMENDMENT – GORDON SAND & GRAVEL – "GORDON PIT"

Request for Gravel Pit Amendment approval to revise the setback along the westerly portion of the site. Zoned Rural-Shoreland Protection Zoning (M86/L11; M67/L1 & M83/L2).

NOT HEARD DUE TO OBSERVANCE OF 10:00 O'CLOCK RULE.

8. PUBLIC HEARING – PROPOSED AMENDMENTS TO CHAPTERS I, II, AND IV OF THE GORHAM LAND USE AND DEVELOPMENT CODE TO ADD "BED AND BREAKFAST, BED AND BREAKFAST ESTABLISHMENT, BED AND BREAKFAST ESTABLISHMENT WITH PUBLIC DINING AS AN ACCESSORY USE, AND INN" AS ALLOWED USES IN VARIOUS ZONING DISTRICTS. THESE AMENDMENTS INCLUDE PERFORMANCE STANDARDS FOR THE USE.

Proposed amendments to the Gorham Land Use and Development Code to add "Bed and Breakfast, Bed and Breakfast Establishment, Bed and Breakfast Establishment with Public Dining As An Accessory Use, and Inn" as allowed uses in the following Zoning Districts: Chapter I. Section VI - Urban Residential, VII - Suburban Residential, VIII - Rural, IX Village Centers District, Subsections 1 - Little Falls Village Center, and 2 - Gorham Village Center, Section X - Urban Commercial, XI - Roadside Commercial, XIII – Commercial Office, Section XIV – Office Residential and XVI - Narragansett Development District. Depending on the type of facility, these uses would fall under the home occupation, permitted use or special exception standards of the Districts within which they are located. Additional amendments are proposed to Chapter I, Section V – Definitions; Chapter II, General Standards of Performance, Section II, Parking Loading and Traffic, insertion of a new Section VIII – Bed and Breakfast Facilities (Bed & Breakfast, Bed & Breakfast Establishment, Bed & Breakfast Establishment with public dining facilities, and Inn), with the current Sections VIII, IX, and X being renumbered IX, X, and XI; and Chapter IV – Site Plan Review, Section II – Classification of Projects.

NOT HEARD DUE TO OBSERVANCE OF 10:00 O'CLOCK RULE.

9. PUBLIC HEARING

MAJOR SITE PLAN AMENDMENT/SPECIAL EXCEPTION –74 COUNTY ROAD – BY BATEMAN PARTNERS, LLC.

Request for Major Site Plan Amendment and Special Exception approval by Bateman Partners, LLC in association with Mercy Hospital to upgrade Lot 1, Unit 2, Stargazer Subdivision, to accommodate a Primary Care/Quick-Care medical facility with associated site improvements. (Zoned Urban Residential; Map 3 / Lot 22.402).

NOT HEARD DUE TO OBSERVANCE OF 10:00 O'CLOCK RULE.

10. PUBLIC HEARING

SUBDIVISION AMENDMENT-FARVIEW ACRES/MAJOR SITE PLAN -VISTA PARK CONDOMINIUM/- MAJOR SITE PLAN -VISTA PARK CONDOMINIUM – UNIT 5/ – BY DESIGN DWELLINGS

Request for approval of a proposed Subdivision Amendment to Lot 1 to construct 5 commercial/office buildings with associated access drives and parking. Zoned CO (M32 / L24.001).
NOT HEARD DUE TO OBSERVANCE OF 10:00 O’CLOCK RULE.

11. SUBDIVISION AMENDMENT/PRIVATE WAY APPROVAL -“FAIRFIELD ESTATES” – BY CHRIS DUCHAINE

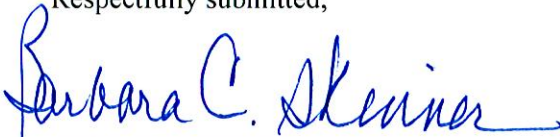
Request for approval of a proposed amendment to Lot 2 of the Fairfield Estates Subdivision Plan to create 3 new lots and approval of a private way plan for Copperhead Drive to access the three new lots. Zoned R, SR, SZ (M79 / L3/4).
NOT HEARD DUE TO OBSERVANCE OF 10:00 O’CLOCK RULE.

12. SCHEDULE OPTIONAL MEETING - JUNE 22, 2009

13. ADJOURNMENT

Douglas Boyce MOVED and Edward Zelmanow SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [11:22 p.m.]

Respectfully submitted,



Barbara C. Skinner, Clerk of the Board
June 1, 2009

4. **CONSENT AGENDA**
JED ASSETS, LLC – MASTER SIGN PLAN – 8 ELM STREET

Approved
Conditions of Approval:

1. That approval of this Master Sign Plan for 8 Elm Street is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning may approve.
2. That all other applicable conditions of approval attached to the original site plan approval shall remain fully in effect;
3. That the applicant is responsible for obtaining all required local, state, and federal permits;
4. That all construction and site alterations shall be done in accordance with the “Maine Erosion and Sediment Control: Best Management Practices,” Department of Environmental Protection, latest edition; and
5. That the conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the date of written notice of approval by the Planning Board, and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to the issuance of any building permits or commencement of any improvements on the site.

**6. PUBLIC HEARING
AMENDMENT TO MINERAL EXTRACTION PERMIT APPLICATION – BY SHAW BROTHERS CONTRUCTION, INC. – “BRICKYARD QUARRY” - REVIEW OF A HYDROGEOLOGICAL STUDY**

**Approved
Conditions of Approval - Quarry**

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 gravel pit/quarry prior to the commencement of mining in any of the proposed phases;
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.
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 the applicant shall provide copies of operation manuals and specifications on all proposed rock crushers to be used on the site to the Town Planner, Code Enforcement Officer, and Town Engineer prior to use;
6. That prior to the commencement of any site construction or the commencement of any mining activity in the proposed approval; the applicant shall request that the Compliance Manager schedule a pre-construction meeting between the applicant, applicant's engineer, and Town Staff to review the approved plans, conditions of approval, and site construction requirements;
7. That the site improvements shall be completed as shown on the approved plans prior to operation of mining activities or issuance of certificate of occupancy; or a performance guarantee, covering the remaining site improvements shall be established through the Planning Department;
8. That the applicant shall submit accurate plans, including the use of GPS-based information where applicable, and AutoCAD information of existing quarry operation area and conditions as part of the yearly Application for Registration of Existing Pit Operations to the Town Engineer and Code Enforcement Officer;
9. That all required reports shall be submitted by the applicant to the Town within 14 days of the applicant's receipt of the reports.

Fire Department COA

- 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, 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 every three years and updated by the applicant as necessary. Copies of the most current plan shall be provided to and made available in the Code Enforcement office, the Public Works Department, and on site at all times;

MDEP Variance & Permit COA

15. That prior to starting mineral extraction operations within phase 2 and phase 3 of the quarry the applicant shall provide proof of Maine Department of Environmental Protection permits and variance approvals for each successive quarry phase to the Town of Gorham;
16. That the applicant shall provide copies of all federal and state air emissions licenses for the rock crushers prior to start of production of construction material to the Town Engineer, and the Code Enforcement Officer;

Noise COA

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;
18. That rock drilling noise associated with the quarry shall be mitigated to meet Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);
19. 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 monitoring results to the Town Engineer and the Code Enforcement Officer within the established 60-day monitoring period.
20. That the applicant shall ensure installation of "Smart Alarms" on all equipment operating on the site, excluding vehicles entering and existing the site that are not involved in site operations.

21. That the applicant shall conduct subsequent noise monitoring on a complaint basis or as part of the Maine DEP's monitoring of the quarry. Additional noise monitoring shall be required when the asphalt plant is replaced. Results of all subsequent monitoring shall be provided to the Town Engineer and the Code Enforcement Officer within 14 days. Noise 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);
22. That the applicant shall work with the Town to seek a "no engine brake" ruling from the Maine Department of Transportation;

Fence COA

23. That the applicant shall maintain a four-foot tall temporary fence around the quarry area along with caution signs, "Active Quarry- No Trespassing," placed every 100 feet during the active life of the quarry;

Reclamation COA

24. That prior to initiating any construction activities at the project site, the applicant 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;
25. That the reclamation work shall be completed within nine months of the closing of the site (or a portion of a site with regard to phased reclamation plans). Reclamation of continuing operations shall be conducted in phases, if necessary, so there is never open more than fifteen (15) acres of total extraction operation area;
26. That upon default of any obligations to reclaim the quarry under this approval, the Town may, after written notice and an opportunity to be heard by the Board of Appeals, cause the quarry operator's reclamation plan to be implemented pursuant to the performance guarantee;
27. That reclaimed areas shall be guaranteed for a period of eighteen (18) months following the substantial completion of reclamation, during which time the performance guarantee shall remain in full force and effect;

MDEP Inspection Reports and Monitoring COA

28. That the applicant shall submit copies of all construction inspection reports required as part of Maine Department of Environmental Protection permitting to Town Engineer, and the Code Enforcement Officer;
29. 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 the Code Enforcement Officer any report of deviations required to be submitted to the DEP;
30. That the applicant shall submit copies of all Maine Department of Environmental Protection site inspection reports as well as descriptions of sound measurement report data to the Town Engineer, and the Code Enforcement Officer;

Traffic COA

- 31 That no certificate of occupancy or removal of mining material, other than the removal of materials to be used in the construction of the required Route 237 and site improvements, shall be allowed 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;
- 32 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 quarry in the morning and no queuing shall occur in the State Route 237 shoulder area;
- 33 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;

Hydrogeological COA

34. That the applicant shall identify the elevation of ground water, as set forth in the MAI letter of March 7, 2008, on sheet 5 of the Site Plan;
35. 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;
 - a. That the applicant shall thoroughly purge test wells before every sampling and testing round;
 - b. That after the DEP monitoring period has concluded, groundwater levels and water quality tests shall be measured three times per year for the first year according to the current DEP suite of tests and twice a year thereafter in the spring and fall until the quarry is operating under a variance from the MDEP to go below groundwater;
 - c. That the applicant's own hydrogeologist shall evaluate the influences of the potentiometric surface on groundwater as the quarry floor progresses downward after each round of groundwater level measurements with the acquisition of additional data from existing sources and keep a log, with results being provided to the Town; and
 - d. That the quarry floor shall be no lower than elevation 135 above mean sea level at the west side and elevation 120 above mean sea level at the east side of the quarry during Phase I.

PLBD COA

- 36 That the applicant shall increase the natural no-cut buffer along the southern boundary to the southern edge of the proposed phase I of the quarry, trees will remain in the no-cut buffer area for the duration of the quarry except tree cutting recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board;
37. That the applicant shall amend the plan to include a plan note that the applicant has determined that there are no vernal pools on the site;
38. That the applicant shall provide for OSHA approved painted walkways between the scale house and the control house as well as any other locations required by OSHA;

39. That the applicant shall maintain a continuous buffer between the public right-of-way and the quarry operations throughout the life of the quarry;
40. 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;

Recording Decision Document COA

41. 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.

Conditions of Approval – License to Blast

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 prior to start of quarry blasting operations and annually thereafter the applicant shall offer a pre-blast survey of property within a half mile of the blast area subject to blasting during that year and as outlined in the Shaw Brothers' Brickyard Quarry Blasting Application;
3. That the applicant has subcontracted with McGoldrick Bros. Blasting Services, Inc. of Windham, Maine, to perform the blasting at the site. The applicant shall submit an appropriate certificate of liability insurance prior to the commencement of any blasting operations at the quarry in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur; and furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance, if the insurance policy lapses;
4. That any changes in the blasting subcontractor will require the operator to notify the Town of Gorham and submit an appropriate certificate of liability insurance prior to the commencement of any blasting operations at the quarry in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur and furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance, if the insurance policy lapses;
5. That the operator shall be required to submit certification of the blaster's liability insurance on an annual basis thereafter in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur and including the requirements set forth in the November 21, 2007 letter from the Portland Water District, included as Exhibit 9 of the applicant's January 2008 Supplemental Information Site Plan Applications on file in the Town Planner's Office, and, furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance if the insurance policy lapses;
6. That the maximum allowed number of blasts per year is 50 with no more than 4 blasts being conducted in any given day and on such days and times as permitted by Title 25, Section 2441 (G);
7. That the records for each blast, including all monitoring records, shall be filed with the Code Enforcement Officer and the Town Engineer no more than ten (10) days after each blast;

8. That, at the beginning of the blasting season, the quarry operator will provide written notice to all property owners within 1000 feet of the potential blast area. In addition, as described in the final approved blasting plan and as presented in the application submission, notification will given one hour in advance of each blast to all neighbors within 1000 feet of the blast site, the Town Planner, the Town Engineer and the Code Enforcement Officer;
9. That all property owners who agree to a pre-blast survey receive a copy of the survey report upon request; and
- 10.-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.