

Town of Goshen
Zoning Board of Adjustments
Meeting Minutes
April 30, 2009

Present: Peta Brennan, Robert Johnson, Chairperson Thomas Lawton, Cyndi Phillips and Secretary Jessica Dennis Bernie Waugh of Gardner, Fulton & Waugh, attorney for the Town of Goshen

Additional Attendance: Shaun Carroll Jr, of Carroll Concrete, Tim Britain of Cleveland, Waters & Bass. Residents: Beatrice Jillette, Lilyan Wright, Keith Hall, Paul Barrett, Virginia Schendler, Linda Ganicke, Allen Howe, Janny Kowynia, Cal Casagrande, Kim Gaddes, Judith Filkins, George Johnson, Jim Carrick, Jim and Prudence McCormick, and Ray Porter

- 1. Meeting Overview:** Thomas Lawton called the meeting to order at 7:32 p.m., an apology is made for any confusion the Board met with legal council before the meeting. The Board has received a letter of resignation for Hannah Lockwood effective April 29, 2009. The Board wants to make sure that everyone is clear about the nature of tonight meeting, this is a special meeting, where the only decision made tonight's is to decide if this application is significantly different from the previous application filed. This is only one aspect of the applications for Newport Sand and Gravel, after this is decided they still must be seek approval of the project from the Zoning Board of Adjustments and then is approved, they must go before the Planning Board. Attorney Waugh comments on the four-member board, if there is a two to two tie vote that would be ground for a rehearing. There are no case laws or statues about a four-board hearing. This is procedural to determine the material difference, in most towns the decision if an application is materially different, is done by the secretary. If it is materially different, then it continues onto the Board for the variance. Attorneys Britain clarifies that if there were a two to two tie tonight then the applicant could ask for another hearing with a five-member board. There are no objections so the hearing continues.
- 2. Questions:** Thomas Lawton states there are some Board members that still have questions for the applicant. Peta Brennan has a question about the North American Reserve, does Newport Sand and Gravel actually have terrain alteration permit, and the permit discussed in this application was issued in 2000, for 76 acres. Has there been a new alteration permit granted? Shaun Carroll says yes. Attorney Britain will look for the new permit number. Peta Brennan also states that this is a 22 acres piece of land, which is the northern most portion of 76-acre project previously proposed. There is a difference between 22 and 76 acres. Peta Brennan has a hard time seeing the difference between the 22-acre permit and the 76-acre permit. Attorney Britain states that what is proposed is going to be a project. Shaun Carroll explains that they are only excavating the 22 acres, for right now. Peta Brennan wants to know if this is a multiphase permit. Shaun Carroll says no, he is not planning to come back for another phase. He would does not want to call it phasing, as the rest of the acreage is not part of this application. Peta Brennan so what does Epsilon mean when they say

its one phase. Shaun Carroll says it's not phasing. Peta Brennan suggests these terms are very confusing. Thomas Lawton does not want to go too far into this tonight, whether it's phasing or something else, for right now they need to address the application in front of them. He used the language that if everything goes right they will be looking for something else. It seems the applicant needs to help us clarify if this phase. Shaun Carroll states that this is not a phased parcel; the previous Board saw a phased set of plans. Will he come back in 10 years and ask for another 10 acres, he is not saying that. It may not happen that he comes back and asks for another phase. 65 acres parcel to one portion only. Attorney Vaughn wants to ask Attorney Britain a hypothetical question, if there was a prior phased project that was given disapproval, and if neither applicant nor Board clarifies themselves. It is disapproved, if neither approves anything further. Is there a point where it becomes not materially different. Attorney Britain states that their present plan is to excavate the land; he cannot predict the future. Each application has to be judged on its own merit. The application tonight they believe is materially different to the application proposed in 2000 and 2004. Attorney Vaughn if every individual application must be materially different from the first, why can the people get through by breaking the previous application into parts. The application must be considered under the circumstances when the application is submitted. Shaun Carroll states the project is materially different because even the setbacks have changed. Shaun Carroll says the line was pushed back to meet new regulations. Peta Brennan questions, when they come around the esker, they will be close to the Sugar River. Shaun Carroll explains they have to back; they cannot be too close to that bank. The bank cannot be reclaimed. Peta Brennan contacted DES, and they told her the 22 acres was part of a multiple phase operation. Shaun Carroll states that DES is incorrect. Bob Johnson states if the Town is pleased with the excavation, Newport Sand and Gravel will be requesting future excavation. Cyndi Phillips comments, that tonight they are reviewing whether their applications are substantially different, they will continue with the application if there is substantial difference. They are all concerned that this may be substantially different now, but where or when does it become not substantially different. The decision made tonight does not mean they proceed with the project. Shaun Carroll explains the original plan was five phases; he cannot bring back the previous application. He cannot resubmit that again. That is the size for this project. Attorney Britain this is why they say the future cannot be predicted, this is the project they intend to do. There is no present intention to do that in the future. Attorney Vaughn asks if they could summarize the ways they see, other than size and visibility to the public, that this project is materially different. Attorney Britain states there are many ways, size, ownership, Newport Sand and Gravel now owns the land. Nature and sequence of execution is different, they will be reclaiming as they go. Visibility to the public is different. This is a three to five year project; the 2000 application was a 20-year project. If at the end of five years this does not go as well as they wish, then that is all they do. There is not proposed pond with this project. Regulatory scheme is different, noise regulations and studies; noise study is different because now there are specific ordinances. In 2004, excavation ordinance adopted with respect to projects of this nature. There is an operational agreement with the

Planning Board now. Different set backs, there are a whole host of difference, than even in 2004. Peta Brennan questions the project changes, is the visibility to public different from 2004 project. Esker will be removed on the way back. How does the visibility become reduce if the esker is removed? Shaun Carroll states the past application was going to be south, now on the north end. Now you will see the north end, which will be buffered. Attorney Britain states the third buffer shown will not be removed only part of it. Thomas Lawton feels it is time for the Board to make a decision. Cyndi Philips wants to make sure the public understand this is not the final decision. Thomas Lawton explains again that the question is about the material difference of this application to the previous. Some members of the public have written documents stating their opinions and those would be appropriated and accepted. Lylian Wright has made copies of her letter for the members. Spent hours studying the documents prepared. Page 2 of letter November 21, 2008 to the Planning Board concerning Newport Sand and Gravel states: "the prevention of damage to the aquifer is achieved by the..." Lylian Wright would like the new DES permit number. The application from year 2000 would not be relevant to 2009 application. Thomas Lawton states that beyond the decision tonight, there are matters of merit that need to be addressed; there are statements in booklets that need clarification. Attorney Britain states they will be happy to take that question up and do not want to leave these issues un-addressed. Peta Brennan state that if do they have the new permit, the new application for 22 acres should include the new permit number, and not the permit number for the alternation of the 76 acres, that makes it appear that it is the same application. Attorney Britain states that he did not assemble the Planning Board application, but if there were an alteration of terrain permit for the larger project, it would likewise grant permission for a smaller permit. Peta Brennan says they do not have a permit. Attorney Britain talked about a larger permit from 10 years ago, this is for 22 acres, and if they need a clarified point they will. The Board feels they do not need the new permit to make the decision tonight if it is a substantially different application. Judy Filkins ask if this application is for the same location as the previous application, is it the Anderson property? Attorney Britain says yes. Judy Filkins state that size may not be the problem; the location was the reason the previous Boards' denial the application.

3. **Decisions:** Thomas Lawton states it is time to proceed. His decision is that while the project before him is substantially different then the application denied in 2000, however the application for project is not substantially different. Because, without some way of knowing the stopping place, this is all we can plan for right now, maybe they will bring it back again. He will not vote that this is substantially different. Peta Brennan states that she agrees, but the letter of the law appears different, the previous application was for 76 acres and this is 22 acres. Yes, this is substantially different. What is black and white, 22 acres is substantially different; therefore she cannot vote against the project continuing through the application project. Bob Johnson feels that what has been seen and listened to is substantially different, but he is hung up on phase thing. It seems that if this goes through they will continue with project and understand it is for this application. Cyndi Philips states that due to the resignation of

a previous member, leaving the Board with only four members if she agrees, Newport Sand and Gravel will start from the beginning, by voting a substantial difference that is not say you don't have a long hard road. The continued public presence, they can legally look at it as different, we can assume and hope they are giving us the truth. It seems obvious that the Board does not feel comfortable. We are not comfortable with documents that say they have a permit and they do not. Tonight there is substantial difference, but she would like some major clarification. The Board has decided by a one to three vote that this application is substantially different from the previous application.

4. **Continuation:** The Board would like to schedule a future meeting; they have not yet invited the public to comment. The regular May 12 meeting has another applicant that night, maybe the Board would be able to find some time during that meeting for public comment. Attorney Britain and the Board agree there should be a single night scheduled for public comment, it is only fair. Cyndi Philips makes a motion to hold a meeting for public comment on June 16th, at 7:00 p.m. Bob Johnson seconds the motion, motion passed. Shaun Carroll will get clarification, by contacting Dick Frazer who submitted the application the DES. Attorney Britain just wants to clarify that the vote was three to one. Thomas Lawton clarifies yes, and would like to clarify that there has been no decision on the application tonight, that will continue with public comment on the 16th. Attorney Britain asks if the Board would like experts here on the 16th, the Board feels they do not need the experts, they will leave that up to Mr. Carroll. Mr. Carroll is going to bring the experts to the meeting on the 16th of June. Motion to adjourn was made by Bob Johnson, seconded Cyndi Philips, motion passed. Meeting adjourned at 8:25.