

TOWN OF GOSHEN
ZONING BOARD OF ADJUSTMENTS
CONTINUATION OF HEARING
NEWPORT SAND & GRAVEL
SEPTEMBER 1, 2009

MEMBERS PRESENT: Chairman Thomas Lawton, Allen Howe, Bob Johnson, Peta Brennan, Cynthia Phillips, and Sue Peacock, Planning Board Secretary.

OTHERS PRESENT: Town Attorney Bernie Waugh, Attorney Philip Britain, Shaun Carroll, Jr., Newport Sand and Gravel, Kathy Carroll, Bea Jillette, Virginia Schendler, Ray Porter, Judy Filkins, Lilyan Wright, Mary Wirkkala, John Wirkkala, Rich Moen, Fran Hadley, Kim Gaddes, James and Mary Walter, Building Inspector Jack Warburton, Select Board Representative Jim Carrick, and Dan Peterson, Goshen Fire Department.

Mr. Lawton welcomed everyone to the continuation of the public hearing for the special exception for Newport Sand & Gravel. Mr. Lawton stated that there is an operative document that is going to be reviewed, which the Board members have not seen yet. Mr. Lawton stated that after the document is reviewed we will move forward with deliberation on the applicants request for a special exception. He stated that this is a Zoning Board Hearing tonight, and that the public hearing has been closed. He said that this will be a matter of discussion of the Board, and will not be entertaining public comment or any yeah's or nay's from the floor.

Attorney Waugh stated that he had typed up a preliminary draft prepared for discussion purposes only. Attorney Waugh stated that this draft was created on the basis of an earlier draft that was given to him by one Board member and so the language that we are reading here is partly that Board members language and partly Attorney Waugh's language, and another Board member voluntarily sent him comments as well. Attorney Waugh wanted to make it absolutely clear to the Board and to anyone here that is listening that this is not Attorney Waugh's decision, even though it came off his computer. Attorney Waugh said that if it goes one way and not the other way, if the majority of the Board decides that they want it to go the other way he can write a decision the other way. Attorney Waugh took the direction that he was given, and he also has this draft on his computer which he brought with him. Attorney Waugh stated that if the document is read over and that the Board finds that they basically agree with it, but that if the Board does not agree with paragraphs X or Y for example, then Attorney Waugh could edit the draft. Attorney Waugh's recommendation was if the Board just does not like the way that the document goes, then he recommends the Board not take a final vote tonight, but to have somebody who wants it to go the other way prepare an alternative draft. Attorney Waugh then distributed copies of the draft document to members of the Zoning Board.

Mr. Lawton and briefly Mr. Johnson then read the Proposed Preliminary Draft prepared for discussion purposes only to members of the Board and all others in the audience, and the last page states Action of

the Board: It is moved by (blank space), seconded by (blank space), to deny the request of Newport Sand and Gravel, Inc. for a special exception to operate a commercial excavation on its property located at Tax Map 203, Lot 2 in the Town of Goshen.

Mr. Lawton stated that it was his understanding that there is not a motion at this time, and Attorney Waugh stated that someone needs to make a motion as to the action of the Board.

Ms. Brennan then asked if this document is open to discussion before any motion is made. Mr. Lawton stated that he believed that there is nothing to discuss until someone moves to adopt this as a decision of the Board. Ms. Brennan then moved to deny the special exception request, Mr. Howe seconded.

Mr. Lawton stated that he just read the document which entailed 18 pages with some very involved material, and to keep any discussion on the document flowing with some clarity, the Board should approach anything that needs to be discussed on a page-by-page basis.

Mr. Lawton then asked if there was any discussion on page one. Mr. Johnson then interjected and stated there were a lot of people who are looking at the document for the first time tonight, and to look through 18 pages after just seeing it is pretty difficult. Mr. Lawton stated that the Chairman recognizes that the Board has had a very lengthy proceeding which started when the applicant first submitted this to us. Hopefully, in due diligence of responsibility of the Board, we have listened carefully to testimony that has been given to the Board. The Board has had materials available to them, and hopefully has had a chance to do that, and to allow us to have significant discussion on. Mr. Lawton stated that he is assuming that our deliberations are going to generate questions amongst ourselves as we proceed from page to page. Attorney Waugh responded that it was and still is his advice that the document is presented to the other Board members the first time simply to assure our compliance with the right-to-know law and that all the deliberation would take place in public. Attorney Waugh agreed with Mr. Johnson that it is difficult.

Mr. Lawton then suggested moving on to page 2 for any discussion, which there was none. Mr. Lawton stated that he would like to re-suggest that as soon as anyone has any comment or question on any page, then the Board can start on the earliest page.

Mr. Howe stated that he is fairly comfortable with the document, and he does not think that he will find any particular page where he will have a comment. Mr. Howe stated that he has not seen 90% of the document, and he is one of the persons who provided comments for this document.

Mr. Lawton then stated that he did have one point that he wanted to talk about which was that the overall tenor of the report that he is in agreement with the legal conclusions that have been drawn by that. Mr. Lawton said that a lot of time at the spent at the hearings on the issue of property values.

Mr. Lawton had some particular concern with Mr. Rauseo (realtor) about the fact that when he was talking about the difficulty in comparable value, as there are not many gravel pits. Mr. Lawton said that Mr. Rauseo indicated that the most important consideration, and this being an unusual kind of property evaluation, was communication, contact and information from brokers, buyers and sellers. Mr. Lawton said he had made a comment to Mr. Rauseo that the report only contained a very few sentences or paragraphs out of 30-50 page report, and that it did not conclude anything of any further information to assist Mr. Lawton himself an understanding of his view on the issue of property values by giving more information that was not included from brokers, buyers and sellers. Mr. Lawton stated that this was a

troubling aspect to him. Mr. Lawton would like to see some language on the issue of property having to do with in essence a lack of deficiency in the report itself, based upon the statement that it is an important point for evaluation, yet it really wasn't addressed in the report.

Mr. Howe stated that he did remember Mr. Lawton making that comment before. Mr. Howe said that it was a difficult task that Mr. Rauseo was given. Mr. Howe stated that it is difficult finding comparable properties, and you have to have a comparable land use. Mr. Howe said in some ways it might not be ideally possible. Mr. Howe said that he believes that Mr. Rauseo is the appropriate person to do this, Mr. Howe accepts his abilities and credentials and he made a good effort. Mr. Howe stated that it strikes him that the examples that were made to find different conclusions than Mr. Rauseo did, and that there were certain aspects of the properties that Mr. Rauseo didn't seem to take into account to change the values. Mr. Howe was not convinced that there would no differences, and would in fact show some of his analyses that there may very well be an impact by property values due to an excavation site.

Ms. Brennan stated she felt that there was probably another basis for comparison that Mr. Rauseo could have found besides comparable excavation sites which she thought left a gaping hole in his basis for comparisons. Ms. Brennan also said that since we have taken into consideration the letters from 2001, there are at least six letters from realtors which gave great validity to the fact that property values would be diminished. Ms. Brennan stated that on the sound assessment report the fact there was not consideration taken into account the noise of the trucks, since everything was based on a computer model. Ms. Brennan thought it was almost impossible to do some real-time assessment. Ms. Brennan said that based on the real estate and sound assessment impact studies, she looked at them objectively and looked at them from both points of view, and she could not come to a positive conclusion.

Attorney Waugh said that this is a complex case and he just wanted to amplify what he said earlier that this is not his decision just because it came out of his computer. Attorney Waugh also wanted to say that even the portions of the decisions of which he did write about and which type legal conclusions are not necessarily the only legal conclusions one could come to. Attorney Waugh stated that there are several legal issues in the document that have been raised where the laws are not fairly clear. Attorney Waugh said that the conclusion he came to in this draft is a different conclusion that Attorney Britain argued in his memos. Attorney Waugh said that the reality is in this decision document there may very well be an appeal and we may very well have disagreement in the course of those legal issues. Attorney Waugh wanted to make it clear that if the Board were to go the other way it would be alright in the cases of other good faith points of view on the legal issues that could be taken. Mr. Howe stated that he came to his conclusion prior to Attorney Waugh's legal issues; he worked through the topics and letters, and Board's presentation. Mr. Howe thought about the noise, he thought about property values, he thought about community character, and he argued those sides and he came to the conclusion. Then Attorney Waugh came in as far as he was concerned in preparing this, and we didn't have a great deal of the special legal background, or historic documents. Clearly, Mr. Howe made his decision first, and was not driven by Attorney Waugh's presentation, to him it makes a clear case to move forward on the legal side that supports the conclusion that Mr. Howe arrived at.

Mrs. Phillips had a personal observation that she was not aware or not someone even insistent to a lawyer and not understanding enough of the law to be able to write a dissenting opinion. Mrs. Phillips stated she was at a loss where Attorney Waugh states where there are points in this document we could take from a

different perspective. Mrs. Phillips is assuming that means that we could come to a different conclusion than this document. Mrs. Phillips states that she does not have that capacity to write such a document, and would she if she dissented with this opinion, would she ask Attorney Waugh to write that? Mrs. Phillips wondered who would write it. Attorney Waugh said that was a good question, and that he thinks that if a majority of the Board has questions about whether they want to vote this direction, and if those questions involve genuine issues before the Board as opposed to issues that could be more argued by lawyers, then it would be entirely appropriate for one of you to draft a different conclusion and Attorney Waugh could fill it in for the same degree that he would do this, or did do this, and then you could compare the two. Attorney Waugh said that certainly is a possibility, and if you just want to do it as an exercise, then that doesn't make a lot of sense. Attorney Waugh said that if enough of the Board were in doubt that you would like to see it in a different way, then it would make sense.

Ms. Brennan said she would like to address what Mrs. Phillips just said, and she thinks by saying that this could be looked from two different legal points of view, and then she thinks that she has introduced some doubt. Ms. Brennan said that one of the subjects that Attorney Britain brought up was the 2001 information was not applicable, the other thing that Attorney Britain brought up was the Mangones decision in 2004 addressing community character was inadmissible, and he (Attorney Waugh?) being a lawyer disagree with both of those. Ms. Brennan stated that a lot of the thesis here is based on the two particular issues, so since Attorney Waugh disagrees with Attorney Britain, she is not quite sure how at that point turning around and write something that agrees with Attorney Britain. Ms. Brennan thinks that makes it more confusing for the other Board members.

Attorney Waugh said he thinks the issue that is the most uncertain is just the whole thing of what happens once you decide to hear a case, once you've decided to bear our material changes, which you did back in April, what does that do? Ms. Brennan commented that the material change back in April was based solely on acreage. Ms. Brennan said that this report addresses real estate values, and it addresses traffic, and it addresses noise. Attorney Waugh said that if the Board wanted to discuss this issue somewhat further, he would suggest a non-public session to receive legal advice.

Mrs. Phillips moved to go into executive session for a period of time to receive legal advice. Mr. Johnson seconded the motion to go into non-public session at approximately 9:05 p.m.

The Board and Attorney Waugh returned from the non-public session at approximately 9:15 p.m.

Mr. Lawton wanted to update the Board and others that there was a motion to deny the application for a special exception, and which was seconded. Mr. Lawton stated that the Board is now in the middle of discussion.

Mr. Howe said that way back when the Planning Board was meeting jointly with the Zoning Board, we had a chance to ask questions, and to get down to the point of the first decision, and the point being was this a significantly different application than the previous application. The Zoning Board then voted that it was, yet the task then became before the Zoning Board to go beyond that and determine if a special exception could be granted, there are specific sections of our Zoning Ordinance that relate to that decision. Mr. Howe also said that we really have to separate those two in your mind, once you have

decided; which the Board did, then this is significantly different from the prior application. Mr. Howe said that the focus now has to be on those parts of the ordinance related to the special exception, and as to whether those criteria have been met. Mr. Howe is comfortable in making that leap, and he wondered if everyone on the Board wants to discuss that at all.

Mr. Johnson stated that the one point that needs to be brought up is that when the Board made that decision in April, that decision was based on more than just acreage, but was on scope of work and testimony that we had received at that point too. Mr. Johnson also said that it wasn't a blind decision based on acreage alone. Mr. Johnson wanted the Board to know that his decision was based on scope of project, expert testimony given, and acreage. Ms. Brennan said that she remembered her decision distinctly because it came after Mr. Lawton's. Ms. Brennan stated that she did not want to grant the continuation, and she had said that she felt we had to base the difference between 22 acres and 76 acres, or 67, and that was her sole reason for suggesting the application go forward.

Mr. Lawton said that there was a vote on that without any findings of fact or rationale for individual votes that then became a collective decision, and everybody arrived at what their vote was internally and then we voted and it was (sentence cut off or not finished). Mr. Johnson said he wanted to clarify that he didn't just vote on acreage alone, and there were other factors that he used in his own determination. Mr. Howe said that it seems like people have voiced their comments, and if the Chairman wants to then we could have some discussion about the particular issues related to the special exception. Mr. Johnson said he has a question concerning the highway noise, do we discount the noise that's on public highways or do we count that, and he knows that it has been argued that noise on the highway is not regulated by the town. Mr. Johnson wondered how we are to take that into consideration that noise on RT 10 or are we not? Mr. Johnson said that if it is a state regulation then he is not using any of that RT 10 noise in his decision, but in this document we are using it quite a bit.

Mr. Howe said that he certainly did not have this document memorized in one reading, but to him it seems to get onto one of the legal opinions that we are dealing with, and some of it has been decided previously, he believes at the last decision. Mr. Howe said that Judge Mangones addressed that factor.

Mrs. Phillips said that even if we don't consider RT 10 because it is not a local road, we still have to consider Lear Hill Road, and the affective noise on Lear Hill Road. Mr. Howe said that all the other aspects that were brought forward, and there were other reasons that are part laid out in this particular draft motion creates noise that would indicate that, and there is reason to believe that some of the town noise standard would not be met from locations for the duration of the project. Mr. Howe also said that there are several factors here related to noise, so if you wanted to start discounting, and he is not personally willing to discount highway noise. Mr. Howe said that for sake of argument if he did, and you still go forward with the issue of noise, then the study that was done doesn't clearly indicate that there is reason to believe that the ordinance has been met. Mr. Howe said that even beyond that it seems to him that essentially that the town would be faced with a situation where the noise from this project would be the same noise that the previous Board found that would be offensive to the public. Mr. Howe said that it comes somewhat irrelevant, in his opinion, in terms of acreage under excavation. Mr. Howe said that if the operation basically is going to be the same number of trucks, and the same annual excavation amount, that's what creates noise not the fact that 20 acres or any other amount, if you're only going to operate so

many trucks on a given day, and a given number of hours per day the maximum amount of excavation is the source of noise.

Ms. Brennan said that the Zoning Board raised exactly the same objection to the Epsilon report in conjunction with its 2001 decision, see paragraph 18A of the Zoning Board's May 22, 2001 decision, as was noted by the Superior Court, order of 2-21-03 at 12, yet the court upheld the Board. Ms. Brennan said that the earlier decision is therefore res judicator with respect to the issue raised by Attorney Britain.

Mr. Johnson asked if the data from 2001 valid today, as the trucks are different from 2001 to 2009, is that going to create a difference in the sound that was denied in 2001. Mr. Johnson wondered if that nullify using that data from 2001 versus the data from 2009.

Ms. Brennan said that the amount of trucks necessitated to excavate 2000 cubic yards will in fact exceed those used in 2001, which she believes are 186,000 or 136,000 cubic yards, which would necessitate less truck traffic than 200,000 cubic yards being excavated

Mr. Lawton said that one of the things that (on the question of noise) that he remembers the expert talking about taking some readings on the vicinity of Lear Hill Road. Mr. Lawton stated that there was a comment made that did not have to do with truck noise, but had to do with the Davis operation, and that he was able to hear the operation from that that monitoring site, which he believed was on RT 10 just past Lear Hill Road. Mr. Lawton stated that what struck him about the noise piece, that is it in violation of the noise ordinance, and to him the noise question was not how loud it was, but what kind of noise and where. Mr. Lawton stated he could play his favorite rock band, Led Zeppelin way below the decibel level of the noise statute, but if he did it outside the church or outside the library or at the time the people are there, is that going to be found offensive and it may be well below that. Mr. Lawton said that to him the idea of noise while it falls under one section of where we are required to we are to make it, it also straddles when you think about the character of the community piece of the area, and he thinks that given that where this site is, whether it is relatively modest noise to someone. Mr. Lawton said that if he is visiting a relative at a gravesite on the other side of Brook Road, he may find any noise from the excavation site unpleasant and offensive, or if he is in the library and he is trying to do work and he hears something, that noise level may be well below the maximum decibel level that is allowed under our statute. Mr. Lawton said that it still could impact him as an individual, and those are the kinds of things that he thought about opposed to the technical things, but maybe that takes the concept out of that particular section and throws it back into the affected character of the community.

Ms. Brennan stated that the point that Mr. Lawton made is covered in number 29 of the document.

Mr. Howe stated that he thought Mr. Lawton was absolutely right, and Mr. Howe has doubts that the noise study clearly demonstrates that the Town's ordinances will be met, but if they had been met that doesn't indicate the fact the you need to then look at the special exception criteria that relates to whether that noise would be deemed as offensive to the public, certain kinds of noise is acceptable at one location and offensive at another. Mr. Howe also said that a prior Board found this noise as being offensive. Mr. Howe wondered about the prior mention of data that Mr. Johnson had said about the 2001 trucks and noise and were they different, Mr. Johnson stated that was his own observation.

Mrs. Phillips said she agreed with Mr. Lawton on depending where you are in town and her being in the library a lot with the front door open. Mrs. Phillips said that currently as it stands, there is, and she doesn't know what the current decibel level is, just the standard traffic that we have now is making it impossible to keep the front door of the library open when we have meetings or meeting sessions. Mrs. Phillips said that she finds that noise irritable. Mrs. Phillips said that her problem is if the Board's are saying one thing, and we don't have expert testimony from one side, because the townspeople who present to us that noise on the house on the hill off RT 10 with the noise on RT 10. Mrs. Phillips stated that we are taking their personal testimony as the public expert testimony, and then we are holding that against the scientific reports. Mrs. Phillips said that is the problem she is having with that, and she doesn't know what to believe, and she knows what she personally feels, but can she make a decision based on personal feelings. Mrs. Phillips said she is looking for the law to guide me, and she is stuck.

Mr. Howe believes she can rely to a degree on her personal experience in order to make a decision, as long as you don't solely rely upon your personal experience, and he took the noise study at face value and didn't question the results other than when he started to examine it there were areas he became skeptical and maybe there are answers, but things that seem to indicate that they were not going to be even the town minimum town noise standards at all locations all the time. Mr. Howe said that one of the most disturbing ones was how that truck produces 69 dBA at 50 feet could somehow be modeled to produce 55 dBA at 22 Lear Hill Road, which was approximately 50 feet from the end of the haul road. Mr. Howe said there was example that he just took his data and didn't make sense. Mr. Howe said that you can use your personal experience, and it is part of the process.

Ms. Brennan asked Attorney Waugh if a person's personal experience be taken as expert testimony.

Attorney Waugh said that in the court decision in 2003 the applicant argued that expert testimony can only be countered by other expert testimony and certainly my reading of the decision is that that ascertain was rejected by the court. Attorney Waugh stated that the law cannot tell you what to believe, the court basically says is the fact finders must determine which testimony is the most credible, and you can use your own personal experience to determine what testimony you think is most credible.

Mrs. Phillips referred to paragraph 18 in the draft decision document, and stated she personally did generally decide that there were significant differences in the applicants current proposal for a number of reasons, when the question of the permit numbers, their level of peak current, when that arose and the Board did some investigating into it as paragraph 18 states. Mrs. Phillips said she is concerned that the facts seem to point to an active plan to go beyond being one excavation on this smaller scale. Mrs. Phillips said the Board heard from the applicant that there are no crystal balls and no one knows what the future is going to be, and yes if in fact this one project went forward with the agreement of the town, the town felt that in the course of the project the applicant was handling the project in the conscientious and respectable manner, perhaps a future proposal coming before the Board, whatever manifestations. Mrs. Phillips said that the fact that a state department is telling us that it is not just one phase, but it is actually three phases rather than one phase, which does concern Mrs. Phillips. Mrs. Phillips said she feels somewhat misled, which leads her to feel about how much information she can take at face value. Mrs. Phillips said that she does take a lot of this, and she is not an expert, and she listens to the experts. Mrs. Phillips said that it is a difficult place to be in knowing how the community and her neighbors feel.

Mr. Johnson said that one thing the echoed the sentence on that was that on that the paragraph prior to that (paragraph 17?) says that Mr. Carroll had responded that if the Town was pleased with the work Newport Sand & Gravel may return with another application. Mr. Johnson said that in the next paragraph that Mrs. Phillips was citing the replacement permit is showing three phases, but that he is not counting on it, that if people do a good job he could come back.

Mr. Howe said that he believes Mr. Carroll in that is what he wants to do now, Mr. Carroll has brought in his application and this is what he has presented. Mr. Howe said that certainly would there be anybody who operated his business and had that resource available who wouldn't want to take more of it if the first permit was approved its entirely logical that that would take place. Mr. Howe said to him what he is looking at is what he is applying for. Mr. Howe said that a lot of the issues that we are focusing on are pertinent to the piece he's talking about excavating, and we don't need to make them bigger to deal with the same number of trucks and the same noise issues and the same affect on property value. Mr. Howe doesn't think the Board needs to get tangled up too much in these details, it could be the way DES does things, or the way the permits are processed, that was the explanation we were given by Mr. Carroll and is even entirely possible. Mr. Howe states that he is not too hung up on those details, Mr. Howe accepts that's what it is, and Mr. Howe will believe Ridgley Mauck, too. Mr. Howe is thinking that anybody is trying to pull anything over on the Board is just a logical sequence that would happen you get approval on this application you would certainly want to go forward at some time in the future, the resources are there, demand is there for project. Mr. Howe is focusing on what is asked and what is actually requested in the application.

Mr. Lawton stated that he was waiting to hear what people would like to discuss, he thought that the Board went through the document, and went through it, and he thinks that people probably have a fairly good idea whether their attitude towards the motion itself is concerned. Mr. Lawton is assuming for the moment that all of the Board knows which way they are going to vote, either in favor or opposition for the application. Mr. Lawton thinks that what might be occurring here is that it is important to the applicant and it is important to the town that the decision writes in support of whatever the ultimate decision on the application is clear and believed to be supportable. Mr. Lawton stated that he cannot agree with every line if he were to agree with this right now, such as the noise study which is trigonometry to him (which he never took), that is way beyond him. Mr. Lawton said that he does have a fairly clear view of what his attitude is towards character and the community, noise, and property values that we've talked about, so that gives Mr. Lawton the ability to make what he believes an informed impartial decision on the facts that were presented to him. Mr. Lawton stated that he knows the document is long, 18 pages, and we can stare at it for 4 days, but sooner or later we have to cut to the chase. Mr. Lawton said that if there are areas where we want to have discussion where somebody wants to try to change his mind he will listen.

Mrs. Phillips said that she would play the devil's advocate and throw it out on the table about property values. Mrs. Phillips said that it can be argued that a functioning business in the community could actually improve property values for a person moving into a community in this day and age where jobs are scarce fear of, yes it can decrease property values for someone who is going to retire in this community as a rural community. Mrs. Phillips said that if you are a young husband and wife with three kids and you're looking for work and you have a business in town that viable, it may actually be a draw.

Mrs. Phillips said she's done it and she's said it, and you (Board?) can all gladly be declining, but we have to look at both sides also.

Mr. Howe said that he certainly agree that gravel excavation is often terms of essential business, it's not that it's not necessary in our society to have this sort of business. Mr. Howe said that he thinks that what we are looking as a town here is that this just isn't the right location because of its impact on the character of the town. Mr. Howe said that it is unfortunate that you can't have both the business and a nice town. Mr. Howe said that in his opinion that it is somewhat supported by the studies that were done as well. Mr. Howe said that there is property values associated with a gravel excavation, business of this particular size at this location. Mr. Howe said that if you took this proposal and you plunked it somewhere else in town, where it is not in the center of the village, he suspects there might be a different impact. Mr. Howe thinks that the public testimony did get into the question of jobs, and he thinks it's more of a regional business in that aspect; an individual did ask Mr. Carroll if jobs were created by this business whether the jobs would be for people who live in Goshen or Newport. Mr. Howe said there are two sides, but in terms of the requirements of granting or denying the special exception, whether it creates jobs isn't one of them.

Mr. Johnson said that if you looked at the way Mr. Carroll had set up the presentation, which he set up at one time, he thinks during one of the joint sessions. Mr. Johnson said that the area was going to be pretty well buffered from the view on road side and RT 10 level, that we wouldn't see much of that business for quite awhile. Mr. Johnson wondered if that does have an impact of what we are voting on. Mr. Johnson said that the visual disturbance is going to be minor compared to what it could be.

Mr. Howe said that what he is basically saying that there is no visual impact, but there is some down the road. Mr. Johnson said that on the other side of that, from some places in town, like Cross Road or other places in town will see it three sixty five 24/7. Mr. Johnson said that you are up high enough that you could see over all the impact it has created, but at the road level in the village where we are really concerned about it and are not sure of the noise levels, because we had one resident that said they could hear the noise from the Davis Pit up in that area and up on Ball Park Road.

Ms. Brennan said that a 200 foot piece of that esker will be removed, which is actually in contravention of a Planning and Zoning law, but that would be a matter for the Planning Board if this application is approved by the Zoning Board.

Mrs. Phillips said (could not understand) and she didn't know where to go.

Mr. Lawton said if there is not further discussion on the motion, time to vote on it. Mr. Lawton said that there is a motion before the Board, and has been seconded, to deny the application for the special exception for Newport Sand and Gravel. All those in favor of the motion signify by saying "I", Mr. Lawton said "I", and then Mr. Lawton asked for any abstainers, Mrs. Phillips and Mr. Johnson both abstained from the vote. Mr. Lawton said that with affirmative votes, the motion to deny the application for special exception for Newport Sand and Gravel has been approved.

Mr. Lawton asked Attorney Waugh for guidance. Attorney Waugh said that the decision was incorporated, and those who voted in favor wanted to amend the draft it would have moved within the motion. Mr. Lawton said that in hearing nothing from those who vote affirmative then the motion that

was indicated in the document as a draft for discussion purposes only has been incorporated into that motion and the decision of the Board, so we need to prepare a final document simply to contain that language, and Mr. Lawton wondered to Attorney Waugh about that and the signatures. Attorney Waugh said that he could do all this through email and take the proposed and fill in the votes and send it down for purpose of minutes. Attorney Waugh said that he caught a couple of stray punctuation marks in the document that he will fix as well, and will have no affects on the subject. Attorney Waugh will send the final document to Mr. Lawton.

Mr. Howe made a motion to adjourn the hearing, Ms. Brennan seconded, and all were in favor to adjourn at approximately 9:40 P.M.

Respectfully submitted,

Sue Peacock

Planning Board Secretary