

**Town of Goshen
Zoning Board of Adjustment
Minutes of July 25, 2012**

Members Present: Doug O'Clair, Chair; Bob Johnson; Ray Porter; Mark Rissala; Mike Chilson, Alternate; Clark Wamsley, Alternate

Chair O'Clair called the meeting to order at 7:05 p.m.

MINUTES

The Board reviewed the minutes of May 23, 2012.

Mr. Porter made a motion to accept the minutes of May 23, 2012 as written. Mr. Rissala seconded the motion. All in favor.

Chair O'Clair ruled that Mr. Chilson shall sit on the Board as a full member and Mr. Wamsley shall sit on the Board as an alternate member. Mr. Chilson will sit in for Mr. Hall who has recused himself from this hearing for reasons of being an abutter to the applicant; and Mr. Wamsley will participate, except for deliberation this night, in the event the hearing is continued to July 26, which Mr. Johnson will not be able to attend.

UNFINISHED BUSINESS

None

PUBLIC HEARINGS

Newport Sand & Gravel, Inc. – Tax Map No. 203 Lot 2 - Special Exception Section V. Commercial Use (Articles F & I) – Gravel Excavation.

Chair O'Clair read the public notice as printed in the July 14th issue of the Eagle Times.

Notice is hereby given of a hearing to be held at 7:15 p.m. on July 25, 2012 at the Goshen Town Hall concerning a request by Newport Sand & Gravel, Co., Inc. for a Special Exception Application to Section V. Commercial Use (Articles F & I) of the zoning ordinance. The applicant seeks approval for the development of a gravel excavation site on the west side of route 10 with entrance located 1,100 ft. south of Route 10/Brook road intersection, Tax Map No. 203, Lot No. 2 for the purpose of extraction of commercial quality aggregate. Application is available for public review at the Goshen town Hall during normal business hours.

Chair O'Clair stated that all application requirements and fees were submitted, therefore the hearing will continue. For clarification, Chair O'Clair read the guidelines and intent of special exceptions from The Board of Adjustment in New Hampshire, A Handbook for Local Officials, October 2009, prepared by the NH Office of Energy and Planning. He reiterated that if the conditions for a special exception are not met the Board cannot allow it; however, if the

conditions are met, the Board must grant the special exception. Section IX B. of the Goshen Zoning Ordinance states that before granting a special exception, the Board must first determine that the proposal will conform to all applicable specific standards contained in the ordinance and that the proposal will have no adverse effect upon:

1. The character of the area in which the proposed use will be located.
2. The highways and sidewalks or use thereof located in the area.
3. Town services and facilities.

Chair O'Clair outlined the protocol for how the hearing will proceed. All questions shall be directed through the Chair.

Richard Fraser, One Source Properties & Permitting, LLC and representative for Newport Sand & Gravel (aka NS&G), presented the application. He stated that on May 23, 2012 NS&G presented an application to the Zoning Board of Adjustment (aka ZBA) for a rehearing for a special exception for gravel excavation based on a new application with different components, and the request was granted.

Mr. Fraser guided the Board and the public through a cursory review of the plan sheets. The first of three plan sheets shows a 15.6-acre excavation site on parcel Map 203 Lot 2. The access is proposed to be on the westerly side of Route 10 at a distance of 1,100 ft. south of the intersection of Route 10 and Brook Road. There is an existing, state-approved access off Route 10 which leads to a bridge that crosses over the Sugar River. There is a fence erected to impede unauthorized entrance to the access road. The topographical contour lines are at 5 ft. intervals, which was derived from a flyover in the year 2000. The second plan sheet shows the final grade and reclamation plan, also with topo lines at 5 ft. contour intervals. The grading is shown at 20 ft. increments with reverse bench plateaus to contain any potential storm water on site. A wetland study and delineation was conducted by Jonathan Sisson (CWS) in April of 2012 as shown on the plan. The third plan sheet outlines the Best Management Practices, which NS&G follows. The components relative to this sheet are under the purview of the Planning Board.

Mr. Fraser reviewed the application as submitted.

Page 1&2 – Application for Special Exception coversheet

Page 3 – List of abutters

Page 4 – Driveway Permit No. 6140 as granted by the NH Dept of Transportation in the year 2000 for seasonal commercial sand and gravel excavation use. The driveway is built and exceeds specifications.

Page 5 – Alteration of Terrain Permit No. WPS-5574B granted in 2009. A new, updated permit has been submitted but not yet granted. The application for permit No. WPS 5574B was two acres larger than the current proposal, so NS&G is confident a revised permit will be granted.

Page 6 -11 – Specifics to the special exception request. Mr. Fraser said he will address the specifics after reviewing the remaining documents in the application.

Page 12 & 13 – Results of a noise study conducted on June 1, 2012

Page 14 & 15 – Letter of Opinion by Richard Fraser which outlines his thoughts as a professional Principal Broker, Realtor, CPESC regarding issue of diminution of property values.

Page 16 – Memo from Mary Pinkham-Langer, Sand & Gravel Appraiser for the NH Dept. of Revenue, stating ‘...a large percentage of them (gravel pits) are right in the middle of developed residential housing.’

Page 17 & 18 – Qualifications and credentials of Once Source Properties & Permitting, LLC

Page 19 – 24 – Best Management Practices for Fueling and Maintenance of Excavation and Earthmoving Equipment

Page 25 – 26 – Best Management Practices for Stump and Brush Management

Page 27 – 36 - USDA Natural Resources Conservation Service handbook for Vegetating NH Sand and Gravel Pits

Mr. Fraser returned to the specifics of the special exception application on page 6.

As provided by the town of Goshen Zoning Ordinance, NS&G is applying for a Special Exception relative to the company’s plans to establish an excavation site on its 208.0± acre property located off Route 10. The property has an established, permitted access point located approximately 1,100 ft. south of the Route 10/Brook Road intersection, on the west side of route 10. The material found on this property is sand and gravel, as suggested by the USDA, Sullivan County Soil Survey and affirmed by numerous test pits. The planned activity involves the creation of an excavation area encompassing roughly 15.6± acres. In large measure, this activity will be seasonal, likely from May through November, on weekdays and during daylight hours. The proposed use has been carefully sited and sized, and designed to protect nearby natural areas, neighbors, and community. The materials included with this application serve to effectively address all applicable provisions and standards of the Ordinance related to the granting of a Special Exception.

SECTION IX.B. ZONING BOARD OF ADJUSTMENT SPECIAL EXCEPTIONS

1. *The proposed special exception shall have no adverse effect upon the character of the area in which the proposed use will be located.*

For many decades, the Town of Goshen and the associated Route 10 corridor have experienced a continuous history of numerous operators excavating deposits of sand and gravel.

The employment of the best Best Management Practices will have the direct result of eliminating or greatly mitigating any potential impacts to the environment and community. There is nothing proposed in the application materials which will disrupt or unbalance the existing character of the area... anything outside of the 15.6 acre provides a natural vegetative buffer from dust, noise and view. Please keep in mind that the 15.6± acre Project Area is located nearly in the middle of the 208.0± property.

The ample distance between the excavation site and dwellings will certainly suppress the creation of nuisances, and health or safety hazards. Impacts from vibration, unsanitary conditions,...noxious odor, and the like will not develop from this type of operation. There will be no buildings or refuse

issues that will develop. *Explosives (blasting) will not be used in this project, nor is locating crushers on site being proposed.*

The proposed project will be managed with an emphasis placed on a designed, concurrent reclamation and excavation process. There will be continuous excavation followed by the reclamation process. Incremental development of the site will also eliminate or effectively mitigate potential impacts.

Water and/or calcium chloride will be used to suppress dust along the internal haul roads and operations area as necessary. All gravel truck drivers leaving the site with material will insure the loads are covered and contain the dust and will also serve to help prevent spillage along travel ways. In addition to the use of the natural BMP of using substantial vegetative buffers to contain potential fugitive dust and the use of other treatments within the operations area, the company has available a consultant who is certified as a visual emissions observer, quantifying dust emissions utilizing USEPA Method 9. If problems with dust arise, there is a mitigator available to them.

The operation will not be offensive to the public as a result of noise. The use of discretionary backup alarms on front-end loaders, circular traffic patterns for truck loading, preservation of vegetative buffers, and other Best Management Practices will mitigate potential noise issues. The discretionary backup alarms go off at a distance less than 18 ft., therefore there won't be a lot of those. By managing noise related issues, NS&G will effectively address and meet the provisions of the Noise Regulation.

The traffic operations, capacity, and safety aspects of the area are not expected to change as a result of the excavation operation. The excavation industry has been present in Goshen and the greater area for decades. Haul trucks have traversed Goshen via State Route 10 for many years. Since roughly 2001 until 2008, NS&G has trucked sand and gravel from points south of the Goshen town line to its production facility in Newport. The same fleet of trucks, with no restrictions to the number of truck trips, has operated the Witham Route 10, Fellows, and Peck excavations sites. This proposed excavation site will only serve to dovetail with the historic level of NS&G truck trips of the State Route 10 corridor.

The proposed project will not cause the diminution of property values within the local area. There is no evidence to support any suggestion the project will cause a diminution of property values. In fact, a property which looks upon the Davis excavation site has recently sold at a premium selling price. Real estate values have been impacted by the regional/nation economy, not by excavations located within or proximate to the town.

Simply stated, the project will employ the necessary Best Management Practices in order to demonstrate a commitment to responsible land stewardship as it relates to the environment and to the area. The activity will have no adverse effect upon the character of the area in which the permitted use by Special Exception will be located.

- 2. The proposed special exception shall have no adverse effect upon the highways and sidewalks or use thereof located in the area.*

State Route 10 is a Class II highway that was built and is being maintained to accommodate passenger vehicles as well as commercial truck traffic. The speed limit is 30 mph north and south along the point of ingress and egress to the project area. The NHDOT reviewed the details of the entrance and determined sight distance, approach, and other factors were suitable for issuing a driveway permit authorizing access to seasonal commercial sand and gravel excavation. This permit contains no special conditions resulting from the type of proposed activity.

Truck activity associated with the project will blend with similar types of commercial vehicles utilizing the Class II highway...

3. *The proposed special exception shall have no adverse effect upon town services and facilities.*

The very nature of the project suggests that the Town of Goshen will not incur expenditures nor will the project require any town services.

SECTION III. Districting and General Provisions

B.7. – No alteration of terrain or excavation on land designated on official town soils and elevation maps having a slope of 25% or greater shall occur without a special exception granted by the ZBA following presentation of satisfactory evidenced that erosion and access factors will be adequately addressed. Provided, however, that for an excavation requiring a special Exception under V(F) of this ordinance, only one special Exception shall be required and the factors otherwise considered under this section shall be examined by the ZBA in conjunctions with Section V(F).

The plan sheets and associated text document that were submitted as an integral component of this application have undergone a technical review and, in turn, the project was issued an alteration of Terrain Permit the NH DES. The technical review conducted by DES personnel included issues related to slopes and earth moving activities, in addition to reviewing provisions included in the application materials to insure the integrity of surface and ground waters would not be compromised.

H. Wetlands Development

Mr. Fraser stated that Jonathan Sisson has already conducted a site review and drafted the wetlands delineation.

SECTION V. Commercial Use

Mr. Fraser pointed the Board back to Item No. 1 which refers to pages 6 and 7 to address the issues in this section.

To summarize, the proposed project will not create an undue hazard to health, safety, or property value.

Potential hazards to human safety will be mitigated by the use of a gated entrance, fencing where slopes exceed 1:1, and by requiring all employees to attend an eight hour Mine Safety & Health Administration training class annually. All visitors are subject to “site specific training”, as mandated by MSHA. Effective dust control BMPs and noise control BMPs have been described in the above-referenced section.

As previously mentioned in this document, vibration will not be a factor during the development of the site. Explosives are not planned to be used on site. Also, the use of crushers on the NS&G site is not part of the application.

No increase in the level of existing historical traffic will result from the operation. It must be noted that the operation is seasonal. Traditionally, traffic will travel to the site during the months of May through November.

Unsanitary conditions will not be created as a result of the proposed project. No buildings or associated refuse issues are planned during the life of this project.

No odor or other nuisance features are expected to emanate from the site. The process of excavating aggregate is straightforward and does not lend itself to these types of nuisances.

A.2. – Home Businesses

N/A

B. Setbacks and Frontage

Mr. Fraser stated that most of this section is not applicable to the application.

C. Off-Street Parking: Sufficient off-street parking shall be provided to accommodate all reasonable anticipated patrons and employees. In order to provide for the most efficient means of road maintenance, snow plowing, and access by emergency, police, and fire vehicles, no parking of vehicles within the street shall be permitted.

There is ample space for such parking within the 15.6± acre project area.

D. Commercial Open Space: Any new commercial enterprise shall provide, for each one (1) square foot of building space, three (3) square feet of open space etc.

N/A

E. Outdoor Advertising: Outdoor advertising shall be permitted only in conformity to the following regulations...

NS&G is not requesting than an outdoor advertising sign be approved for this project. Therefore, this provision of the ordinance is not applicable.

F. Removal of Earth Materials: Once any special exception is granted, a permit must be obtained from the Planning Board, according to the provisions of NH RSA 155-E. No crushing equipment shall be allowed except as provided in Section III.K.

NS&G is aware of this provision and intends to abide by each component of this requirement, including grading requirements. The use of crushing equipment, if any, will comply with the requirements of Section III.K. Grading will be conducted with the requirements set forth above.

Mr. Fraser stated that: G. Commercial Subdivision is not applicable
H. Summary of Commercial Use Provision is not applicable
I. Commercial Uses that Require Special Exception, the company has responded to by submitting this application and has addressed everything in the zoning ordinance. The only thing that has not been discussed is the noise study, which Shaun Carroll, Jr. will address.

Shaun Carroll, Jr. referred to page 12 of the application which is a two-page letter from Mark LaFave, Director of Safety, Health and Environmental issues at Carroll Concrete. Mr. Carroll explained that on June 1, 2012 Mr. LaFave conducted a noise sampling by dumping the same sized loads in different areas to measure the decibels. When standing on site next to the load being dumped into the body of a truck, the average decibel reading was 88.93 db. When standing on the edge of Route 10 and a load was dumped into the body of a truck at the gravel pit, the average decibel reading was 55.95 db. The passing of a Harley Davidson motorcycle read 81 db, and the average passing vehicle gave a reading of 63 db. The calibration of the equipment was verified, so the results are accurate and reliable.

Chair O'Clair stated that he can attest to the testing; he reviewed the site and stated that the testing was completed where it would be most logical and where the most noise would be heard.

Clark Wamsley asked if there was a Goshen resident present when the testing was done.

Mr. Carroll stated that there was not a Goshen resident present. He reviewed the credentials of Mr. LaFave and stated that he was very qualified to perform such a test.

Chair O'Clair pointed out that the Noise Measurement Standards in the Goshen Zoning Ordinance allows up to 65 dBA between 7 a.m. and 10 p.m. or 55 dBA between 10 p.m. and 7 a.m.

Mr. Wamsley commented that he is concerned that the experts who have provided opinions are employees of NS&G.

Mr. Carroll pointed out that no matter who the experts work for, if they abuse their positions and do not comply with standards, the State will shut the company down.

Mr. Wamsley commented that the driveway permit in the application appears to have expired.

Mr. Carroll explained that the driveway permit was issued in July 2000, and the driveway was built shortly thereafter before it expired in July 2001. The driveway does not expire once it is built, but the permit will be updated to address the paving requirements.

Shaun Carroll, Sr. stated that he spoke to the DOT District Supervisor regarding the updating of the driveway permit. The Supervisor indicated that they will have the same permit conditions and the same permit number; it just needs to be updated on paper.

John Vandenberg asked what is proposed for hours of operation.

Chair O'Clair stated that the operation activities are under the purview of the Planning Board. The Zoning Board's review is only to determine if a gravel pit operation is allowable.

Don Bailey commented that it seems like the Carroll's are going out of their way to comply with and address all of the requirements. He stated that he feels the special exception should be granted.

Kim Gaddes stated that in 2000 the application requested the use of Haul Road. Substantial information regarding dust and noise was given, and the ZBA at that time denied the use of Haul Road. That road was built for farming, not for gravel excavation. These issues have already been addressed in the past and the application denied because of them. The information from the 2000 hearing should be considered and added into these minutes.

Mr. O'Clair explained that this is a new application and by law, whatever happened in the past has no bearing on tonight's meeting. If there is information that someone would like to be considered, then it needs to be brought to the Board.

Alan Greenhalgh stated that he is in favor of the gravel pit, but asked the Board if it would make more sense to consider the Lear Hill entrance instead of the Haul Road since Lear Hill has a more controlled traffic patten and stop sign.

Mr. Carroll, Sr., stated that NS&G and the Town of Goshen went to court over the gravel pit issue. I emphasized that a new application has to be materially different. If the Lear Hill entrance is proposed as an access, then the application could be deemed not materially different and denied. At this point, it would be illegal for NS&G to ask to change the application as submitted.

Chair O'Clair pointed out that prior to applying to the Planning Board, the applicant cannot change the components of the application once they receive approval from the ZBA.

Mr. Carroll, Jr., commented that the Lear Hill entrance is feasible, but the company does not want to chance a denial.

John Wirkkala commented that there is still a pending court case in the Supreme Court regarding an application that proposed Lear Hill as an entrance. He asked if the application applied for tonight is approved, what happens to the court case.

Chair O'Clair explained that a letter was received July 25, 2012 asking the Supreme Court to set aside the pending case contingent upon this hearing.

Chair O'Clair asked to hear from the members of the public who are in favor of the application and want to make comment.

Mr. Vandenberg stated that he is an acquaintance of Mr. Carroll, Jr., and has no problem with the application or with Mr. Carroll going back on his word. He commented that he believes Mr. Carroll is very trustworthy, and his word is binding; and the Town of Goshen to take the opportunity to let a family-owned business come in and help the Town prosper as well.

Steve Bursey commented that while outside at his place of employment, he and his fellow employees could hardly hear the gravel operation happening out back.

Rita Purmort stated that she has lived in Goshen all of her life, there have been seven working gravel pits in operation in that time that she knows of, and none of them have ever been a problem.

Bruce Nadeau commented that people should keep in mind that concrete has built America. It is used every day. People should look at NS&G's other project and realize they do an excellent job. If the company does something wrong, the State and/or Federal authorities will shut the operations down.

Chair O'Clair asked to hear from the members of the public who are not in favor of the application and want to make comment.

Chair O'Clair read a letter from Fred and Cynthia O'Clair stating their position not in favor of the use of Haul Road. The use of Haul Road will exacerbate vehicle use, and produce noise, vibration and dust. It will take away from the visual amenity and create a loss of privacy and property values. Additionally, a business in the nature of heavy industry could follow on the reclaimed land.

Fred O'Clair commented that there is a safety concern in respect to the entrance of Haul Road coming out near the "S" turns on Route 10. He stated that the Lear Hill entrance would be safer for traffic.

Ms. Gaddes asked if there was going to be the opportunity for the public to submit comment on July 26.

Chair O'Clair clarified that the hearing was posted for July 25 only. The Board had discussed and made tentative provisions for the members to be available on July 26 if there needed to be a continuation of the proceedings tonight. It appears the Board will

not have to continue this hearing until July 26, therefore there will not be an opportunity for public comment on July 26.

Ms. Gaddes spoke of the negative impact this gravel operation application has had on her life and her property over the past 12 years.

Being no further relevant comment from the public, no rebuttal, Chair O'Clair summarized the process. The ZBA has an obligation to follow the guidelines outlined in the regulations. If the Board agrees the applicant has met the conditions of the regulations, then the Board is obligated to approve the application.

The Board began deliberation.

Mr. Porter commented that it was his understanding in all of the discussion that the Board has had, that the hearing was scheduled for July 25 with July 26 on standby in case there was a need to continue so that this application would not have to be dragged on month after month.

Chair O'Clair agreed and stated that it was advertised the newspaper for July 25 only and on the public notices as July 25 only.

Mike Chilson commented that the Board had previously decided that this application is substantially different than past applications. Therefore, there is no basis for bringing in material from a previous meeting. This hearing should be based upon the information brought forth with this application and testimony.

Mr. Rissala commented that he feels the Board needs to move forward with the information that was presented this evening.

Mr. Porter commented that he is in agreement and the Board should move forward with the application.

Bob Johnson commented that he is ready to deliberate on the application.

Mr. Porter commented that this proposal is as user friendly as it can get. The activity will be in the center of the site, the location of the activity mitigates the dust and noise, keeping them contained on the site. He stated that he has no issues with the application.

Mr. Rissala commented that the proposal is comprehensive and straightforward, and all of the necessary information is provided. He commented that he is ready to move forward with a decision.

Mr. Chilson commented that the applicant has addressed the issues that needed to be addressed. They have gone above and beyond what is required. He commented that he does not believe the operation will have a negative effect on the Town.

Mr. Johnson commented that the traffic issue is beyond the purview of the ZBA. He stated that he believes the applicant has covered all of the requirements.

Chair O'Clair commented that he would like to suggest a stop sign at the end of Haul Road and a flashing yellow light on Route 10 to alert drivers; but that is a Planning Board issue and will be brought up at that table. He suggested that during the excavation process, the last section to be excavated should be the section closest to Route 10.

Mr. Chilson made a motion to approve the application as presented. Mr. Porter seconded the motion. All in favor.

NEW BUSINESS

None

COMMUNICATIONS

None

OTHER BUSINESS

Minutes

The Board reviewed the minutes of June 13, 2012.

Mr. Rissala made a motion to approve the minutes of June 13, 2012 as submitted. Mr. Porter seconded the motion. All in favor.

Mr. Johnson made a motion to adjourn. Mr. Porter seconded the motion. All in favor.
Meeting adjourned at 8:45 p.m.

Next meeting: August 8, 2012

Respectfully submitted,

Linda Plunkett
Recording Secretary