

**SANFORD PLANNING BOARD MINUTES
SPECIAL MEETING – August 31, 2016 – 6:30 P.M.
City Hall Annex Third Floor Chambers**

MEMBERS PRESENT: Lenny Horr, Chair
John McAdam, Vice Chair
Edward Cormier, Secretary
Dianne Connolly
Sarah Littlefield
Jennifer Georgius

MEMBERS ABSENT:

STAFF PRESENT: Elizabeth Della Valle, AICP, Director of Planning & Development
Michael Casserly, Asst. City Engineer
David Parent, Superintendent, Sanford Water District
Steve Buck, City Manager

STAFF ABSENT: Matt Hill, Director of Public Works/City Engineer (w/notice)

I. CALL TO ORDER

Chair Horr called the meeting to order at 6:37 PM. He then went over the procedure for tonight's meeting.

II. PUBLIC HEARING

1. **File #08-16-RU: Tom Shaw, Gorham Sand & Gravel**, c/o Dana Libby, PLS, Corner Post Land Surveying, Inc., 600 Main Street, Springvale, Maine.

Before reopening the public hearing, Chair Horr asked for an update on the project.

Planner Della Valle updated the Board on the latest submissions from the applicant. She also wanted to let the Board know that the applicant and staff have been working hard to come to an agreement. She said for her part there is only a small list of issues that need to be worked out and went over the list.

Chair Horr confirmed with Board members Georgius and Littlefield that they have reviewed the materials and listened to the minutes from the last meeting, then asked the applicant if they had any problems with the two members participating in the review. The applicant responded they had no objections with the two members participating.

Chair Horr reopened the public hearing.

Chair Horr asked if anyone present, by show of hands, would like to speak in favor of the application; there were five (5) people.

Chair Horr asked if anyone present, by show of hands, would like to speak in opposition to the application; there was no one.

Chair Horr asked if anyone present, by show of hands, would like to comment on the application; there was one (1) person.

Michael Traister, attorney and partner in the firm Murray, Plumb & Murray, representing the applicant thanked the Board for the time they have given the applicant and proceeded to give a background of the project. Mr. Traister also highlighted the agreement made between the applicant and David Parent, Superintendent of the Sanford Water District, and the items remaining for discussion before the Board which are beneficiation of materials and reclaiming of slopes.

Mr. Traister reiterated the applicant's position that they believe it is legally impermissible for this renewal application to be reviewed and conditions or restrictions imposed on the applicant based on the arrival and initiation of a new use by a new abutter, the water district's new wells which recently went online, so the applicant does object to the process on this basis. They also feel that it is inappropriate that the applicant's application has been formally reviewed by the very abutter who has issues and concerns of the ongoing operation at the Libby Pit, which includes the Superintendent of the Sanford Water District and other city staff, which not only review and advise the Planning Board but actually participated as members of the Site Plan Review Committee; also there was a significant amount of here say at the last hearing.

Mark Curtis, Gorham Sand & Gravel addressed the Board as to what has taken place since the last meeting.

Tom Shaw, Gorham Sand & Gravel thanked the water district for working with them.

Since no one present wanted to speak in opposition to the application, Chair Horr asked Mr. Houle, an abutter if he wanted to make general comments.

David Houle thanked the Planning Board for their effort. He said he has worked with Mark with their concerns and the concerns have been addressed. Mr. Houle also stated that there will be an open line of communication in the future.

David Parent, Superintendent, Sanford Water District informed the Board that a lot of progress has been made in reaching an agreement. He also stated there are some things he did not agree with regarding Mr. Traister's comments but felt they could be dealt with later if needed. Mr. Parent outlined the steps taken in order to attain their agreement.

Board member Cormier asked Mr. Parent if he was satisfied with the applicant's well monitoring plan. Mr. Parent confirmed he was.

Mike Casserly, City of Sanford Assistant Engineer thanked everyone who has reviewed this project. Staff member Casserly's main concerns were the slopes and beneficiation (importation of material); he then went over the operations manual and informed the Board this would be worked on after tonight's meeting since there was an issue with communication between Dana Libby and staff member Casserly before tonight's meeting. Other topics he brought up were:

- Performance guarantee total
- Waiver request for soil
- Stormwater management plans

Chair Horr asked if anyone from the public would like to make comments on the project; there was no one.

Chair Horr opened the floor to Gorham Sand & Gravel to rebut the testimony of staff members.

Tom Shaw and Mark Curtis addressed some items discussed by staff members regarding open areas during excavation, the operations manual, and bonds they have in place.

Discussion took place on the length of time 30-acres have been open and the asphalt/concrete stockpiles.

Beth Della Valle, Planning Director asked David Parent how he reconciles the stockpiling of asphalt/concrete on site when the ordinance specifically prohibits it in the wellhead protection area. Mr. Parent replied he can't and explained why. Mr. Parent's main issue is with 'inert' material and he would not have compromised on this matter.

Staff member Della Valle informed the Board they do have the authority to waive the standard and allow the stockpiling of inert material. If the Board does waive the standard, they need to explain why. Discussion followed.

Mark Curtis said they have a consultant that does all their testing so it is a third party doing a testing. He also said if they were proposing a new pit to the city, they would not be requesting stockpiling but since it has been a part of their current operation they would like to receive approval to keep doing so. Discussion took place on where the stockpile of concrete/asphalt was located on the property.

Chair Horr closed the public hearing.

III. NEW BUSINESS

1. **File #08-16-RU: Tom Shaw, Gorham Sand & Gravel**, c/o Dana Libby, PLS, Corner Post Land Surveying, Inc., 600 Main Street, Springvale, Maine.

Staff member Della Valle reviewed her recommendations with the Board. She stated she is recommending approval with a number of conditions.

Chair Horr asked if Board members had any comments.

Board member Cormier felt if Dave and Mike have come to peace to with the proposal, the city had mitigated the risk as best we can.

Board member Littlefield was also comfortable with the project due to the DEP's declassification of the substances and our ordinances are not up to date with this recent ruling.

Vice Chair McAdam is not comfortable with it because he does not know if DEP allows this process near a wellhead area. A Board member asked if someone could give clarification on this. Mr. Parent said DEP does cover wellhead protection, mostly aiming at petroleum products. He is opposed to asphalt/concrete bulk storing and explained why; discussion followed.

Board member Connolly's concern was the 20,000 people put at risk by allowing materials to be brought in and explained why.

Board member Georgius appreciates the compromises that have been made but still has a concern with the asphalt and concrete onsite.

Chair Horr appreciates the compromise and time everyone has put into this project but he is also concerned with stuff being brought onsite. He would not have an issue with a straight gravel operation.

The main concern was the piles within the 2,500 day line. Discussion took place among the applicant, Board members, and staff members regarding the current location of the stockpiles, if other areas in the pit could be used for the stockpiles, and how to locate contamination and what the water district would do in a contamination situation, and the reasons for compromising with the applicant.

Board member Cormier confirmed with the applicant that the asphalt/concrete operation is only a small portion of their operation in this pit and asked the applicant what would happen if the Planning Board decides not to allow the importation of materials due to their concerns discussed tonight.

Mr. Curtis responded that their other operations are not located nearby which would put them at a competitive disadvantage.

Tom Shaw stated he reserves the right to appeal the Board's decision and feels that there is no risk with the asphalt, it is bacteria.

Chair Horr confirmed with Mr. Parent that he is not concerned with a straight mineral extraction operation. Discussion followed on the risk of allowing the importation of materials to the site.

The Board took a break at 9:25 P.M.

The Board came back in session at 9:40 P.M.

Mr. Parent made a statement regarding his position on the gravel pit and the risk to the wellhead.

Board member Connolly asked Mr. Parent if any contamination had been detected in the last ten (10) years. Mr. Parent replied there has not been.

Other discussion topics included:

- Resurfacing of Bernier Road for Pepin pit
- Tracking contamination if location of stockpiled materials moves
- Testing of imported materials

It was decided to go through the Finding of Facts before voting on the application.

Planner Della Valle read the proposed findings of fact that are Not Applicable:

- §272-2-20.C.(5): Tanks shall meet state & federal requirements
- §272-2-20.C.(6): Outdoor storage of hazardous materials shall use product tight containers which are protected
- §272-2-20.C.(8): Floor drains shall be approved by the LPI prior to installation
- §272-2-20.D.(3): In areas not served by public sewer, no more than 1 dwelling unit may be connected to subsurface waste disposal
- §272-2-25.D.(3) Lagooning
- §272-2-25.D.(5): Fill shall not restrict a floodway, channel or natural drainageway

- §272-2-25.D.(6): The sides of cuts, fill, channels, or artificial watercourses shall be constructed and stabilized
- §272-2-25.D.(10): Adjacent lot lines of one or more owners shall be exempt from Subsection D(8) and (9)...if they agree in writing
- §272-1-8.E.: Pedestrian circulation
- §272-1-8.M.: Exterior lighting
- §272-1-8.O.: Landscaping
- §272-1-8.S.: Airport encroachment

Board member Cormier made a motion that the subsections as read by Planner Della Valle were not applicable to this project.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6.0.

The Board then went over the remaining Finding of Facts:

Ordinance Section 272-2-20.C. Standards for Groundwater General performance standards:

- (1) Where hazardous materials are stored, used or generated, design to prevent spills and discharges of hazardous material.

Board member Cormier made a motion that the standard has been met based on the applicant's Spill Prevention Plan and indication that there will be no fuel storage on site.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

- (2) Areas for loading and unloading hazardous and polluting materials shall be designed to prevent spills and discharges to water and wetlands.

Board member Cormier made a motion that the standard has been met based on the applicant's Spill Prevention Plan and indication that there will be no fuel storage on site.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

- (3) Design facilities so all hazardous materials are contained on site.

Board member Cormier made a motion that the standard has been met based on the applicant's Spill Prevention Plan and indication that there will be no fuel storage on site.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

- (4) Secondary containment where hazardous materials shall be provided.

Board member Cormier made a motion that the standard has been met based on the applicant's Spill Prevention Plan and indication that there will be no fuel storage on site.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 6-0.

- (7) Discharge of fluids from motor vehicles shall not be permitted into/onto the ground.

Board member Cormier made a motion that the standard has been met based on the applicant's Spill Prevention Plan and indication that there will be no fuel storage on site.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

Ordinance Section 272-2-20.D. Additional performance standards in public water supply protection districts.

- (1) Volume & quantity of recharge shall not increase level of contaminants entering groundwater.

Chair Horr made a motion that this condition has been met. Since there was no second on the motion, motion died.

Board member Georgius made a motion that the standard has been met with conditions as discussed in the compromise developed by the applicant and Sanford Water District.

Chair Horr seconded the motion.

A vote was taken and the motion failed 2-4. (Board members Horr, McAdam, Connolly and Georgius voted against the motion.)

- (2) Stormwater shall not increase level of contaminants entering groundwater.

Chair Horr made a motion that the standard has been met because stormwater will not increase level of contaminants entering groundwater because the pit is proposed to be internally drained. Applicant's employees are trained to handle hazardous materials and it is in the self-interest of the applicant to ensure that imported materials will not contaminate the groundwater.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

Ordinance Section 272-2-25.D. Mineral extraction standards

- (1) Excavations below the high-water table.

Chair Horr made a motion that the standard has been met with conditions because excavation will not extend more than five feet above the high water table as defined by a lowering of the pit floor contour by 1 foot from the 2011 plan. The Groundwater Monitoring Plan will be revised to conform with this requirement.

Board member Cormier seconded the motion.

A vote was taken and the motion passed 6-0.

- (2) Diversions, silting basins, terraces and other methods to trap sediment shall be used.

Board member Cormier made a motion that the standard has been met because the proposal provides adequate methods to trap sediment on the site.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

- (4) The extent and type of fill shall be appropriate to the use intended. The applicant shall specify the type and amount of fill to be used.

Board member Cormier made a motion that this standard has been met with conditions because the compromise states the Bernier Road embankment will not be filled with imported fill, it will be used with nearby and native material that's there and that imported asphalt is just for the processing and not used for fill.

Chair Horr disagreed with this because imported fill will be used elsewhere. Discussion followed.

The motion changed to: "...with the condition that the embankment along Bernier Road and the Rivard property will not be over-excavated and the slope will be 2 ½:1 with nearby onsite materials.

Chair Horr seconded the amended motion.

After discussion, Chair Horr retracted his second on the amended motion because he would like the motion to cover imported materials in the entire pit, not just the embankment.

Since there was no second on the motion, motion died.

Chair Horr made a motion that the condition has not been met because the proposal presents an unreasonable risk to groundwater quality because of over-excavation of slopes and use of imported and relocated soils, that may be dissimilar in physical and chemical properties to the natural parent material from elsewhere on site, to backfill the slopes in a public drinking water protection area. The scale of importing, processing, and sale of offsite materials is inappropriate within a public drinking water protection district.

Board member Connolly seconded the motion.

Discussion took place on the material that will be used for backfilling.

Chair Horr made a motion to amend his previous motion to add: "Though the applicant does not propose to over-excavate slopes and rebuild them with offsite materials within 1,200 feet of the Sanford Water District wells, it does propose to over-excavate and rebuild slopes with offsite materials on the rest of the site."

Board member Connolly seconded the motion.

A vote was taken on the amendment to the motion and the motion passed 4-2 (with Board members Cormier and Littlefield voting against).

A vote was taken on the motion as amended and the motion passed 4-2 (with Board members Cormier and Littlefield voting against).

- (7) No below-grade excavation, except for drainageways, shall be allowed within 100 feet of any public road.

Board member Littlefield made a motion that the standard has been met because the proposal includes no below-grade excavation within 100 feet of a public road.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

- (8) No below-grade excavation, except for drainageways, shall be allowed within 50 feet of any lot line, except that excavations within five feet of a property line may be permitted on condition that a written report from a licensed soil scientist is provided to the Planning Board stating the suitability of the soils to hold a slope of two to one.

Board member Cormier made a motion that the standard has been met because the proposal includes no below-grade excavation within 50 feet of a lot line.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

- (9) The sides of cuts, fill or channels along public roads or lot lines shall not exceed a slope of two feet horizontal for every one foot vertical.

Board member Littlefield made a motion that the standard has been met with the conditions of the compromise due to the Bernier Road line, which they were going to fill with onsite materials.

Board member Georgius seconded the motion.

A vote was taken and the motion passed 6-0.

- (11) Permanent ground cover shall be required within 100 feet of all property lines, including all boundary slopes. Said ground cover shall comply with soil and conservation standards and recommendations.

Chair Horr made a motion that the standard has been met because the applicant will establish permanent groundcover at the end of extraction operations, intending to establish a hay field.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

- (12) Upon expiration of any permit or termination of operations, the applicant agrees to implement a suitable plan for reclamation of said site as approved at the time of approval.

Board member Cormier made a motion that the standard has been met because the proposal includes a suitable plan for reclamation meeting the Maine Department of Environmental Protection's Best Management Practices. The applicant proposed to establish a hay field.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

Ordinance Section 272-1-8. Site Plan Approval criteria and standards.

A. Utilization of the site.

Chair Horr made a motion that the standard has not been met because though mineral extraction and drinking water protection can coexist on this site, the manner in which the operation is proposed (importing and/or relocating onsite soils to backfill overexcavated slopes; the extent of the proposed stockpiling, processing, and sale of imported materials) go well beyond simple extraction operations and are inappropriate in a public drinking water protection district..

Board member Connolly seconded the motion.

Board member Georgius asked to have wording added to the motion language about the stockpiling of asphalt and concrete.

Staff member Della Valle amended the motion with the additional sentence stating: "The proposal does not comply with §272-2-20.E.(2)(c) which prohibits asphalt and concrete from being stored on site.

Board member Georgius made a motion to accept the amendment.

Chair Horr seconded the motion.

Chair Horr opened the floor to discussion.

Board member Cormier felt with the compromise, the utilization of the site is approved and good.

A vote was taken on the amendment and the motion passed 6-0.

A vote was taken on the amended motion and the motion passed 4-2 (with Board members Cormier and Littlefield voting against).

B. Access to the site.

Board member Cormier made a motion that the standard has been met because Route 4 has adequate capacity to accommodate traffic generated and proposed project will not create hazards to vehicular or pedestrian traffic.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

C. Access into the site.

Board member Cormier made a motion that the standard has been met because the site will be safe and convenient, provides minimum required sight distance, is located to avoid conflicts with turning movements and traffic flow, and meets maximum grade; will not create hazards to vehicular or pedestrian traffic.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

D. Internal vehicular circulation.

Board member Cormier made a motion that the standard has been met because it will provide for safe movement of emergency vehicles onsite, will provide for safe and convenient circulation of vehicles, and will prohibit vehicles from backing out onto Route 4.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 6-0.

F. Stormwater management.

Board member Georgius made a motion that the standard has been met because adequate provisions will be made for disposal of stormwater without damage to streets, adjacent properties, or downstream properties.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

G. Erosion control.

Board member Cormier made a motion that the standard has been met because adequate provisions will be made for erosion control.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 6-0.

H. Water supply.

Board member Littlefield made a motion that the standard has been met because adequate provisions will be made for water supply.

Board member Cormier seconded the motion.

A vote was taken and the motion passed 6-0.

I. Sewage disposal.

Board member Georgius made a motion that the standard has been met because the septic system is outside of the wellhead area.

Chair Horr seconded the motion.

A vote was taken and the motion passed 6-0.

J. Utilities.

Chair Horr made a motion that the standard has been met because utilities are currently provided.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

K. Natural features.

Board member Georgius made a motion that the standard has been met because the landscape will be preserved in its natural state insofar as practical recognizing the site is a gravel pit.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

L. Groundwater protection.

Board member Cormier made a motion that the standard has been met because the proposed project will not adversely affect the quality or quantity of groundwater and does not demonstrate an unreasonable risk to groundwater as per the compromise established by the applicant and the water district.

Board member Littlefield seconded the motion.

A vote was taken and the motion failed 2-4 (with Board members Horr, Connolly, Georgius, and McAdam voting against).

Board member Connolly made a motion that the standard has not been met.

Vice Chair McAdam seconded the motion.

When asked to give an explanation for her motion, Board member Connolly felt the prohibiting of imported materials needed to remain, unlike the proposed motion as read by Planner Della Valle that removed this verbiage.

Board member Connolly retracted her motion and Vice Chair McAdam retracted his seconding of the motion as well.

Chair Horr made a motion that the condition has not been met because the proposal does not demonstrate that it will not increase the level of contaminants entering the groundwater and presents unreasonable risk to groundwater quality. The proposed use of imported soils and relocated on-site soils, which are dissimilar in physical and chemical properties to the natural parent material, to backfill overexcavated slopes raises unacceptable concerns regarding contamination of groundwater. Furthermore some of the materials the applicant is proposing to import are prohibited in §280-2-20.E (1) and (2) (leachable materials, concrete, asphalt, etc.). The scale of importing, processing, and sale of off-site materials goes well beyond basic mineral extraction and is inappropriate within a public drinking water protection district.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 4-2 (with Board members Cormier and Littlefield voting against).

N. Waste disposal.

Board member Cormier made a motion that the standard has been met because it provides for adequate disposal of solid and hazardous wastes.

Chair Horr seconded the motion.

Board member Connolly asked Mr. Curtis if they had to label their contamination buckets. Mr. Curtis explained the process. Discussion followed.

A vote was taken and the motion passes 6-0.

P. Shoreland relationship.

Board member Littlefield made a motion that the standard has been met because excavation operations will take place outside of the shoreland zone.

Board member Cormier seconded the motion.

A vote was taken and the motion passed 6-0.

Q. Technical and financial capacity.

Board member Cormier made a motion that the standard has been met because the applicant has demonstrated financial and technical capacity to carry out the project in accordance with the City's code and the plan.

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

R. Buffering.

Board member Cormier made a motion that the standard has been met because the development will provide for buffering of adjacent uses.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 6-0.

Board member Connolly made a motion to table the application because it is late.

Board member Connolly retracted her motion so discussion could take place.

Discussion took place on whether or not the application was ready for a vote.

Vice Chair McAdam made a motion to table the application.

Board member Connolly seconded the motion.

A vote was taken and the motion failed 3-3.

Board member Cormier asked to allow the applicant, Mark Curtis to speak. Mr. Curtis stated Gorham Sand & Gravel had no interest in operating without a permit.

Board member Cormier asked if it would be possible to approve the mineral extraction operation only. Discussion followed.

Board member Cormier made a motion that the Planning Board approve the applicant's permit for mineral extraction in its cleanest form with no processing of offsite materials, no importation of offsite materials, and no overexcavation.

Board member Littlefield seconded the motion.

Planner Della Valle added the conditions:

- 1) Limit approval to excavate cells #1, 2, 6, and 7. If the applicant wants to expand excavation into other cells on the site, it shall be required to return to the Planning Board to amend its plans and approval.
- 2) Add language to the condition of operations to make it clear that reclamation of the existing overexcavated slope will be done with nearby onsite materials.
- 3) Provide three (3) copies of the final update of the hydrogeologic assessment with the hydrogeologist stamp.
- 4) Provide three (3) copies of the final amended groundwater monitoring plan with the hydrogeologist stamp.
- 5) Provide three (3) copies of revised plan C2.1 (notes 2 and 3) and plan C2.2 (notes 2 & 6) with references to the notes on the relevant details.
- 6) Additional revisions of conditions of operations to address the city engineer's concerns.
- 7) Applicant will check with DEP and if required will label hazardous materials bucket.
- 8) All of the various documents will be edited to be consistent with the approval.
- 9) Allow the applicant to continue to operate for up to thirty (30) days while the revised documents are prepared, submitted, and reviewed.

It was clarified that the motion on the table and the second included the conditions as read by Planner Della Valle.

A vote was taken and the motion passed 6-0.

Vice Chair McAdam made a motion to approve the two waiver requests (stormwater, drainage, and erosion control program; and evidence by the York County Soil and Water Conservation District).

Board member Littlefield seconded the motion.

A vote was taken and the motion passed 6-0.

IV. OLD BUSINESS

There were no old business items.

V. PLANNING DIRECTOR'S REPORT

Planner Della Valle told the Board Lionel Sevigny redesigned the building at 636 Main Street to allow staff level review and asked the Board if they would allow staff level review.

Board member Littlefield made a motion to allow staff level review.

Board member Connolly seconded the motion.

A vote was taken and the motion passed 6-0.

VI. MINUTES

There were no minutes for approval.

VII. ADJOURN

The meeting adjourned at 11:33 P.M.