

**Town of Goshen
Planning Board
Public Hearing on Petitioned Zoning Amendments
Minutes of January 24, 2012**

Planning Board Members Present: Allen Howe, Chair; John Wirkkala, Vice-chair; Ed Peckham; Robert Bell, Ex-Officio; Rich Moen; Bernie Waugh, Town Counsel.

Members of the Public Present: Doug Aldrich, Laura Aldrich, Ed Anderson, Chief Edward Anderson, Don Bailey, Jean Barrett, Paul Barrett, Gordon Bartlett, Herb Bennett, Peta Brennan, Alicea Bursey, Jim Carrick, Kathy Carroll, Shaun Carroll, Jr., Shaun Carroll, Sr., Rick Coats, Bernard Cutter, Gary Dennis, Marianne Dennis, Linda Fournier, Kim Gaddes, Bea Gillette, Keith Hall, Robert Hodgman, Phil Howard, Gary Janicke, Linda Janicke, Paul Krause, Trisha LaBossier, Steven LaBossier, Steve Lamery, Ann OClair, Doug OClair, Dan Peterson, Kate Phelan, Tom Pirozzoli, Heather Plattner, Ray Porter, Jonathan Purick, Rita Purmort, Kurt Richardson, Mark Rissala, George Russell, Virginia Schendler, David Serrentino, Josh Signature illegible, Richard Signature illegible, Christie Smith, Madeline Stevens, Robert Swensen, Doug Webb, Cindy Williams, Mary Wirkkala, Lylyan Wright

Chair Howe called the meeting to order at 7:03 p.m. and circulated a signup sheet for members of the public to sign if they wish. He also circulated a description of the zoning amendment proposal in ballot text and a copy of the actual petitioned amendment for public reference and introduced the Board members.

Chair Howe advised the public that the topic of tonight's meeting is to conduct a hearing on the petitioned zoning ordinance amendment, as required by RSA 675:4. The topical description of the proposal is as follows:

Article A (By Petition): To see if the Town will vote to amend the Goshen Zoning Ordinance, as proposed in Zoning Amendment No 1, by expanding the size of the Light Commercial District, by allowing "earth removal activities" (as newly defined) as a permitted use in the Light Commercial District, and by making such activities in that district, and on public highways, exempt from those portions of the Ordinance regulating noise, undue hazards and offensive business. Earth Removal is currently allowed only by special exception granted by the zoning board of adjustment. Such activities would no longer require a special exception in the Light Commercial District, but would continue to be subject to a permit from the Planning Board under RSA 155-E.

Chair Howe advised the public that copies of the petitions are available for review at the Town office, and will be available the day of the meeting. Signatures of the petitioners are available at the Town Office during normal business hours. RSA 675:4.III states, in part: "Each petitioned amendment shall be placed on a ballot which may be separate from the ballot used to elect town or village district officers. A notation on the ballot stating the Planning Board's approval or disapproval shall immediately follow the questions' description..." Thus the statute mandates that the Planning Board take a position on the proposed amendment: to recommend or to not

recommend. The Planning Board cannot alter the proposal; the petitioner cannot alter the proposal at this stage either. The Planning Board's recommendation is not binding on the voters. Thus the purpose of tonight's hearing is twofold. First, the hearing provides a public forum for the affected people to express their views and to be educated by each other about the proposed zoning amendment. Second, the hearing provides the forum at which the Planning Board makes its formal recommendation on the petitioned zoning amendment.

Chair Howe requested of the members of the public and of the Planning Board members to not lose focus. The topic tonight is a proposed zoning ordinance amendment, not any specific past or future application for an excavation permit. Nothing the Board members say tonight should be viewed as an indicator of how the board would rule on any future excavation application that may come before it. Because of the purpose of tonight's hearing, there is no need for the Board to determine the majority opinion of the people present. The majority opinion that will count is at the ballot box. Thus, to promote efficiency in the hearing process, Chair Howe stressed that members of the public need not repeat something that has already been stated by someone else. The Board wants to hear all unique opinions, but does not need to hear them repeatedly. There is an informational handout and sign in sheet for those who wish their presence noted.

Chair Howe outlined the procedure for the hearing tonight. The Board will provide an opportunity for the petitioner to explain the proposed zoning amendment, and then people who wish to speak in favor of the proposal will be heard, followed by people who wish to speak against the proposal. Board members may ask questions throughout. The petitioner will have an opportunity to make a final summary. There may be a deviation from the process if such deviation will promote a better understanding. Chair Howe pointed out that the acoustics in the meeting room are not very good and asked for people to speak loud and clear. Following public input, the Board will close the hearing to public comment and proceed to deliberate and vote to recommend or to not recommend this petition.

Chair Howe reviewed meeting etiquette for tonight's hearing:

Be civil.

Direct all comments to the Board and speak to the issue without making personal attacks on those present or not present.

Eliminate cursing from your statements; use of profanity does not add significance to anyone's comment.

You may be recognized to speak if you own property in Goshen or are a resident of Goshen. Both groups would be affected by the proposed zoning amendment and deserve to be heard. If the petitioner has someone prepared to speak on his behalf, they may speak to the topic of tonight's hearing. Attorney Waugh is present for the Town of Goshen at the Chair's request. He is here to correct any misunderstandings about the amendment process or existing status of the Zoning Board of Adjustment (forthwith referenced as ZBA) litigation process that may arise or to provide other legal advice to the Board members as needed.

A brief recess of the meeting may be called at the Chair's discretion.

The above rules will be enforced so that the civil members of the public can be heard and the Board can deal with the business before it tonight.

Chair Howe advised the public on the rules of disqualification of Board members. If a Board member has a direct personal or financial interest in the outcome of any proceeding, they have a conflict of interest and should not participate in the decision process on that topic. He further explained that if an official is acting in a **quasi-judicial** capacity, for example a Planning Board acting on an application under its jurisdiction, then that official must not have prejudged the case. If an official is acting in a **legislative** capacity, such as a Planning Board adopting subdivision regulations, then there is no expectation that officials will not have a preconceived position. The Board is acting in a legislative capacity tonight. Thus, even if a Board member had a preconceived position in favor or against this proposal, that Board member need not disqualify themselves from this hearing.

Chair Howe advised that if any Board member feels it is necessary to make a motion advising another Board member to disqualify himself from tonight's meeting, this point in time would be appropriate. No Board members so moved.

Chair Howe asked if there were any questions from the public regarding the procedure for the hearing as just described.

Q: Indication was made that people could speak if they live in town or own property in town. What about registered voters?

Chair Howe explained that if they are a registered voter, then they would have to be a resident of Goshen and would therefore be recognized to speak.

Q: Then what is the purpose of having everyone sign their name on the signup sheet?

Chair Howe explained that the purpose of the signup sheet is so that the names of the members of the public who attended tonight's meeting can be recognized in the meeting minutes, if so desired. It is not a requirement to be heard.

No further procedural questions from the public.

Timothy E. Britain, Attorney from the law firm of Cleveland, Waters and Bass was present to represent Newport Sand and Gravel (forthwith referenced NS&G). He explained that NS&G is a family owned business, located in Newport NH, and has been providing resources and employment and assistance to people in this area since 1959. Throughout its existence, NS&G has been and continues to be a leader in the industry of sand and gravel and excavation operations. NS&G is proposing a zoning amendment to the Goshen zoning ordinance to be voted on at the March 2012 town election.

Atty Britain explained that in 1998 NS&G acquired property on the northerly side of Lear Hill Road and on the westerly side of Sugar River, aka the Davis property. The Davis property, as like most all of the other properties on the westerly side of the Sugar River has a large gravel deposit. The Davis family first began excavation activities of that land in 1962. In 1999, NS&G purchased the property on the southerly side of Lear Hill Road, then owned by the Anderson family, which is directly across the Lear Hill Road from the entrance of the Davis pit. It also contained commercially valuable sand and gravel products. In 2000, NS&G first submitted an

application to the Goshen ZBA for a special exception to excavate sand and gravel from the Anderson property. The ZBA denied that application even though the use was permitted by special exception and NS&G provided overwhelmingly expert testimony in support of its application. Nevertheless, despite that testimony and despite the fact that excavation activity had been occurring in that area for over 50 years, the ZBA denied that application. Two years ago, in 2010, after changes to the zoning ordinance and with the encouragement of the Board of Selectmen, and after acquiring title to the property, NS&G again applied to the ZBA for a special exception to excavate the Anderson property. This time, however, the proposed excavation was far more limited than the previous application in 2000. Yet, the ZBA again denied the proposed project for the same reasons as in 2001; even though the ordinance had changed and even though NS&G provided expert testimony addressing the ZBA's concerns regarding noise, traffic, geology and real estate experts pertaining to the proposed project; and, despite the fact that there was no expert testimony provided in opposition to the project. Despite the fact that the existing ordinance allows for excavation activities in the Lear Hill area and in other areas of Town by special exception, it NS&G's opinion that the manner in which the ZBA interprets the ordinance effectively prohibits the excavation of gravel material in town and makes provisions allowing such use by special exception completely unattainable. The ZBA has interpreted the noise requirement so strictly that no project wherever located will be able to comply. Similarly, no project can satisfy the ZBA's interpretation of a common standard to evaluate property values. Given the pattern of development in town and the fact that Route 10 is a major transportation corridor, removal of gravel resources in any area of the town will necessarily unduly affect the community character desired by the ZBA. There has been some suggestion in the local papers that the Town Officials remain open at any time for consideration of alternative and perhaps less intensive operations of the Anderson property. Although NS&G does not doubt that many town officials wish to work with NS&G, the fact remains that the ZBA has now rejected three applications; each less intense than the one before it. The most recent application only sought to excavate a 22-acre site. In short, the ordinance provisions which report to allow gravel excavation by special exception are just words. The ZBA's interpretation of those words renders them meaningless. NS&G strongly believes that the constitutional rights of property owners to use their property in a reasonable manner should not be impeded by unreasonably interpreted regulations. Consequently, NS&G is proposing a very suitable amendment to the Town's zoning ordinance, which will, among other things, allow property owners on the westerly side of the Sugar River to excavate gravel, which is where the resource exists in this town, without a special permit from the ZBA. The petition is available and very easy to understand. In a nut shell this amendment simply asks the voters to 1. Consider whether to amend the zoning ordinance to expand the boundaries of the Light Commercial District, and to 2. Reclassify certain tax parcels so that they become a part of that Light Commercial District. The specific lots that are in question are Map 203, Lots 2, 3 and 8.2; Map 204, Lots 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20; and Map 403, Lots 4.1 and 4.2 all of which are mostly in the residential agricultural zone. Some of them lying in part in the Light Commercial District; and 3. Allow earth removal activities, as newly defined in the petition, to be a permitted use in the Light Commercial District. As requested by the Planning Board, a map is provided that shows the areas that would be affected by this zoning amendment. This is an amendment that would benefit not only properties that are owned by NS&G, but also other property owners as well by taking advantage of permitted uses of the Light Commercial District if they so choose. This amendment will benefit the town by providing economic benefits to the town including jobs, revenues from

removal of gravel, and an increase use of affected properties. All construction activities, particularly the development and maintenance of roads, depend on gravel resources. NS&G has been in business a long time, and they are very simply asking to be able to do business in the same manner locally and take advantage of the properties that they own in the same way that they have in the past. NS&G respectfully requests that the Planning Board votes to recommend the passage of this zoning amendment.

The hearing was opened to questions from the public.

Don Bailey asked Atty Britain to explain the map as presented since it is difficult to see from the audience.

Atty Britain explained that the section colored in green is the existing Light Commercial District.

Tom Pirozzoli asked if excavation is allowed in the Light Commercial District now.

Atty Britain said yes, by first obtaining a special exception from the ZBA; then an excavation permit from the Planning Board.

Mr. Pirozzoli asked if that was true anywhere in town.

Atty Britain said yes.

Chair Howe stated he would like to interject two comments. RSA 155-E specifies that while there is a right for an individual to apply for application, the very fact that there is a section called Prohibited Projects would indicate that there is no right to be approved for every application that is submitted. The other point is that the subsequent applications made by NS&G to the ZBA were less intensive in acreage, but not necessarily less intense in terms of daily and annual removal. He stated that he would prefer not to spend a lot of time talking about the history of applications, but would like to focus on the amendment proposal itself.

Atty Britain commented that the fact remains that despite attempts to pursue the process of a special exception, NS&G has been unsuccessful. Therefore they believe it is appropriate for the voters to view this question and decide whether this use should be allowed to occur as a right in the Light Commercial District without prior permission for a special exception from the ZBA.

John Wirkkala, Planning Board member, commented that the existing Light Commercial District extends 500' back on both sides of Route 10, and 1,500 ft. north from the juncture of Route 10 and Brook Road and 1,000 ft. south from the junction of Route 10 and Brook Road. He asked how many feet the proposal includes and what properties were added and why.

Atty Britain commented that not being an engineer, he does not know the specific number feet. The properties added on the westerly side of Route 10 were included up to the Newport town line because that is a relatively close border to this area and it seemed appropriate and consistent with the character of the center of town to allow those Light Commercial Districts to extend up to the Town line.

Mr. Wirkkala asked if Atty Britain or Mr. Carroll had spoken with the property owners whose zoning would be changed, and if those property owners were agreeable to having their zoning changed.

Atty Britain said he did not personally speak to the property owners.

Shaun Carroll, Jr. stated that all of the property owners whose zoning designation would be changed by the proposed amendment have been spoken to and they are fine with it. No one has come forward to say otherwise.

Mr. Wirkkala commented that he had one person say that he had not been contacted but did not feel comfortable naming the property owner without that person's permission. Mr. Carroll, Jr. responded that if any property owner objected to being placed in the Light Commercial District he could be exempted.

Atty Britain emphasized that although this proposed amendment would allow earth removal in the Light Commercial District as a permitted use, an application would still have to be made to the Planning Board for approval of an excavation permit.

Q: Could you please name all of the property owners affected, because it seems as though all of the properties affected are owned by NS&G.

Mr. Carroll Jr. answered that the reason this petition evolved was because through the years a lot of misinformation has been passed along and scattered and no one seemed to understand what NS&G was talking about. After several hearings and applications, a lot of things got talked about that were not really factual. As NS&G was trying to educate people about what it was exactly they trying do with their property, a suggestion was made from several community members to do something by petition since the applications made could not get through the ZBA special exception process. So that is why this petition evolved. After two informational sessions, NS&G decided to move forward with the petition. The areas affected, which are designated on the map this evening, are the Anderson property (aka NS&G); the Hadley property (aka NS&G); three parcels comprised of the old Pike field, the portion that is up around near the Stephans' house, the Davis site and the old field near the old Jones' house. So it wraps around a lot of parcels. It also includes the Jennings' house. The Jennings' are fine with the proposal. They realize it is not going to do anything to their taxes, and in the long run, it will make the property more attractive. But, they would still have to go through the appropriate process to make any changes to their houses or their land. McDonough's, Tromdorf's, Soaring Goose to name a few others. The petition was circulated and signed referencing the map and lot numbers, not property owner names, so that is why the property owner names do not appear on the map.

Q: If the wording has been changed on the petition?

Atty Britain stated that the ballot question is the same proposal as was submitted by the petitioner. There has been no change made by the town other than providing a topical description of the proposed amendment. The petition itself has not been changed.

Q: When did this area become Light Commercial? It used to be all agricultural.

Mr. Carroll explained that the petition is seeking to make the change from agricultural to Light Commercial in March 2012.

Mr. Howe explained that there is an existing Light Commercial District that extends 500 ft. back from Route 10 for a distance of 1,500 ft. to the north of the Route 10/Brook Road juncture and 1,000 ft. to the south of the same juncture, which was established in 1988. The proposal adds specific lots as indicated in the petition that would add to the existing district boundaries.

Mr. Wirkkala asked how common it is that a lawyer takes a hand in helping a client to draft such a zoning change affecting the entire community.

Atty Britain stated that he is not sure how common it is, but in his personal experience, he has assisted clients in drafting petitions for zoning changes on prior occasions.

Mr. Wirkkala explained that the expansion of the district in proposed fashion ends up creating the funny shaped district only on the westerly side, not on the easterly side. "It is an odd looking animal."

Atty Britain explained that the properties on the easterly side of the road are not conducive to Light Commercial activities. There are several municipal properties and a church property and a number of residential properties. The area to the west is largely undeveloped and more conducive to light commercial activities.

Mr. Pirozzoli asked if is there anything that ties changing the boundaries of the Light Commercial District with bypassing the ZBA special exception; and is there a reason why these things are tied together They seem to be separate issues.

Atty Britain commented that they are not separate issues in the extent that the use NS&G is proposing and trying to stay in compliance with the zoning ordinance as much as possible. Based on the way the zoning ordinance has been drafted, the Light Commercial District was the only one that was appropriate for the proposed use that we are asking to be allowed to be a permitted use.

Mr. Pirozzoli stated that it was his understanding that a special exception could be granted anywhere in town for a gravel pit.

Atty Britain clarified that what NS&G is asking is for the passage of this amendment which would say that a special exception is not needed in the Light Commercial District and earth removal would be a permitted use in any part of the Light Commercial District. A Planning Board permit would still be required.

Clarification was sought regarding a comment that was previously interpreted to say that if someone did not want to be in the Light Commercial District they would not have to be.

However, the petition cannot be changed and that is how it will go to the voters; so a property owner who did not want to be included in this district has no choice but to be in the district if this amendment passes.

Mr. Carroll stated that is correct, the petition cannot be changed. However, the amendment would not have any effect on an affected property owner's taxes, their land, or anything that that piece covers.

Chair Howe opened the hearing to comments in favor of the petition.

Comment was made that the Town of Goshen needs growth, and if the Town continues to usurp commercial growth, it will not be able to do that. Allowing excavation on the westerly side will not only help NS&G, but it will also potentially help Goshen through an increased tax base. The economy is not getting better on its own. Goshen is one of the smallest towns in the State with very little land and very few roads. Property owners are not going to be able to pay their taxes if they don't move on and grow.

Mr. Bailey commented that prior to the two presentations by the Carrolls this past fall he was very much against the excavation proposal. Since listening to the presentations, his mind has been changed. If this petition will help to speed up the process, then he would like to see it pass. He reiterated that the Planning Board will still have final authority and control over the activity.

Kate Phelan asked what kind of control the Planning Board would have over the activity, e.g. would the Planning Board be enforcing state regulations?

Chair Howe stated that that topic will be covered later in discussion. There is State Statute 155-E and Town excavation regulations that would both be applicable.

Chair Howe opened the hearing to comments in opposition of the petition.

Comment was directed to the Planning Board in reference to changing of the zoning ordinance; the commenter stated that he has lived in Goshen for approximately 43 years and has abided by the rules as written. His home was built and decisions were made based upon the zoning and rules that have been in place. It had nothing to do with commercial zoning. He does not think it is wise to change the zoning for the advantage of one person's situation.

Lilyan Wright asked if the wording 'light commercial' was deleted on the petition. It appears to be crossed out on the handout.

Atty Britain explained that this petition is one of five that was handed in and light commercial should not be deleted. The mark on the copy appears to be an underline, not a cross-out. The point of the amendment is to expand the Light Commercial District, not eliminate it. Therefore, it should be viewed as an underline.

Cindy Williams, Town Clerk, stated that she has the original petitions and signatures locked in her office.

Chair Howe agreed that he would also speculate that the mark in question was an underline, not a cross-out.

Attorney Waugh stated that everything that has happened regarding this petition assumes this is an expansion of the Light Commercial District, not an elimination of the district.

Jonathan Purick commented that he used to be on the Planning Board and realizes firsthand how misinformation can get public. He also commented that this process has been going on for quite some time. NS&G has been denied. That should be the end, but instead NS&G chooses to try to change the rules to get their way. He commented that he does not see any benefit to the Town to pass the proposed amendment.

Mr. Carroll Jr. stated that NS&G would be subject to a gravel tax of \$0.02/yard for what is taken out. Along with everything that has been done with the permits and applications, NS&G has also asked the Board for concessions and talked with a previous Board of Selectmen about how NS&G feels that \$3,600/year to the town for gravel tax revenue is not enough. NS&G offered \$0.10/yard so that the town would end up with \$18,000 in gravel tax revenue, but that offer was never acted upon. NS&G discussed things that could be done to bring revenue into the town and help fix up town buildings and offered all kinds ways to try to help out the town. NS&G was extending a hand in hopes that it may be able to find a way for everybody to work together. Mention has been made that the Town is open for discussion to mediate. Mr. Carroll stated that he met with the Board of Selectmen to discuss the issue, but that failed. He was told the Selectmen still wanted to mediate, so he went to two different Selectmen's meetings to try to mediate. The first one, he asked specifically if they could mediate. One of the Selectmen said he did not know, that he would have to consult the Town's Attorney. Mr. Carroll Jr went to the next Select Board meeting to find out the outcome, and the answer was that the Select Board cannot do it. Every time he hears Goshen wants to mediate, he shows up, and it goes now where. So this petition is an answer to NS&G trying to find a way for the company to meet its needs and keep people on the payroll and do something good for the Town.

Chair Howe stated that it is his understanding that it is illegal for the Town to accept more than what the state allows for gravel tax. There is a distinction between a discussion about how you might move forward with an alternative proposal to overcome the problems the ZBA found in an application versus coming in to a board and saying we can offer you these compensations in return for a different decision. The Select Board has no authority to overturn a decision made by the ZBA. The town officials have been willing to try to discuss a way to move forward as long as there is an application which addresses the ZBA's reasons for denial.

Atty Britain commented that the meeting seems to be getting off topic. This petition is an effort to rezone Light Commercial District and allow earth excavation in the Light Commercial District as a permitted use in this expanded zone. It is put forth as a petition to make a reasonable use of the land and not limit the decision to five people on a judicial ZBA and this issue is on the ballot for the town to vote on and let the town give voice to the issue.

Mr. Purick stated there are valuable gravel materials in the ground, but this petition is not necessary. It sounds acrimonious.

Comment was made that the people of Goshen already spoke on what they wanted for zoning when they voted on the existing zoning regulations. The Board's have upheld that opinion.

Virginia Schendler asked if there was a legal definition of Light Commercial.

Atty Britain pointed out that it is defined in the existing zoning ordinance on page two.

Chair Howe read the existing definition of Light Commercial from the zoning ordinance.

Mr. Pirozzoli commented that if sand and gravel pit revenues make such a big difference in the Town, then Newport and Lebanon should have the lowest taxes in the State, and they are actually the highest. Goshen is a unique town with a small town character. He stated that he personally believe this will change the small town character of Goshen in a detrimental way.

Mr. Carroll stated that NS&G pays over \$34,000 in property taxes. If the land goes into current use, the tax revenue would probably drop to \$2,000; so that is going to have a detrimental effect on the tax base. He stated that there is no purpose to leaving the land out of current use if the gravel cannot be excavated.

Ms. Wright asked for clarification Point 3 of the petition seems to be safeguarding the Town, then point 4 seems to take away some of those safeguards.

Atty Britain explained that this amendment would allow earth excavation as a permitted use in the Light Commercial District. Any place else in town that is not the Light Commercial District, earth excavation activity would still need a special exception. And, whether it is in the Light Commercial District or the Residential/Agricultural District, an earth excavation application would still need to go before the Planning Board for an excavation permit and satisfy the Town's excavation regulations and those of 155-E. This petition would simply add a use to those activities already permitted in the Light Commercial District.

Chair Howe pointed out that based on paragraph IV, this proposal would exempt earth excavation in the Light Commercial District from the Town's noise ordinances and would also say that earth removal activities in the Light Commercial District shall not be deemed an undo hazard or offensive business.

Alan Greenhalgh, commented that this good turnout represents how the Board has upset the community. The inability for the Town and Boards to work with Mr. Carroll is astonishing. It seems the Town doesn't care. Mr. Carroll bought a gravel pit because it was a gravel pit. Mr. Greenhalgh said he believes the existing Planning Board and the current zoning is good, but he is voting for this petition because of the way the man was treated. Gary Caron operated his gravel pit for the last two years he owned the property without a permit and then left it a mess. The Carroll's purchased it and cleaned it up. Mr. Carroll is trying to help the community; I don't see any reason to distrust him.

Ms. Brennan asked for clarification regarding Point #3 on the petition, which it seems to suggest people still need to go to the ZBA.

Atty Britain explained that Section 5. F. of the current ordinance states that before any earth removal permits are granted anywhere in town, a special exception must first be obtained from the ZBA. Because there is a specific provision governing the removal of earth materials, it will be permitted use in the Light Commercial District.

Ms. Brennan asked for clarification regarding “amending” Paragraph F. Does Point 3 replace existing Paragraph F or is Point 3 in addition to Paragraph F; because if it replaces Paragraph F, then there would be no provision for reclamation permits and bonds.

Chair Howe commented that he also thought that meant Paragraph F would be removed which means the following phrase would also be deleted: ...’when the removal of materials is completed, sufficient grading must take place to allow covering with 2” of top soil and seeding with a suitable cover except where ledge rock is exposed. All permits terminate upon change of ownership. The Planning Board may require posting of a bond with the Town treasurer to ensure compliance.’

Atty Britain stated that the proposed Item 3 would replace in entirety Paragraph F, and that the phrase read by Mr. Howe would be eliminated from the ordinance. However, those points are already covered under the Town’s Site Plan Review regulations under the Earth Excavation regulations. In essence, it would not be eliminated from the Town’s regulations; it would just be eliminated from the zoning text. Having that statement in both sets of regulations is redundant.

Ms. Brennan commented that this amendment would also eliminate earth excavations from being held accountable for noise regulations, nor could earth excavations be deemed an undo hazard or offensive business. In a nut shell, excavation activities will no longer be held accountable to the Town of Goshen for noise, dust, traffic, health, safety, or diminution of property values.

Atty Britain reiterated that the applicant would still be subject to the Planning Board regulations that govern earth excavations. Consequently, the applicant would be held accountable to the Town of Goshen’s regulations. All of those issues are adequately covered in the Planning Board regulations.

Chair Howe commented that he does not believe that property values are mentioned in the site Plan Review excavation regulations.

Atty Britain commented that it would be a policy decision made by the voters of the Town. If they decided it is a permitted and appropriate use in this zoning district and is therefore permitted, the vote would invalidate those criteria.

Clarification was made that this petition would include earth excavation in the definition of Light Commercial District.

Q: What could or would be done to protect the views?

Chair Howe explained that there are provisions for visual screening in the Planning Board's excavation regulations. It would be addressed in the application review. Screening is not required of the Davis pit because the Davis pit is grandfathered and was in existence prior to the earth excavation regulations being adopted by the Town.

Atty Waugh clarified that the Davis site is grandfathered from the special exception, but not from RSA 155-E. RSA 155-E will always apply.

Atty Britain stated that if the Town had no zoning, it would still be able to fall back on NH RSA 155-E.

Ms. Brennan asked if the Town passes this petition, does that make gravel operations in Goshen exempt from RSA 155-E.

Atty Britain stated that RSA 155-E speaks to the characteristics and criteria that should be applied if there is no provision in town regulate gravel excavations. It governs a number of issues regarding setbacks and reclamations. All of that would still pertain. Where a town has made a decision in its zoning ordinance, those provisions of 155-E would not be applicable.

Dan Peterson commented that in creation of the Masterplan, Light Commercial zones were encouraged. As a Light Commercial District, He stated that he believes this would be a good zone to come up with a good tax base. It is set back, out of the way. Light commercial zones were discussed by the Masterplan Committee. The Town has an opportunity to create a better tax base, and it shouldn't matter who a particular applicant is, the growth is good. He stated that he lives near two gravel pits and they do not negative impact his property.

Atty Britain commented that the Davis pit was a use that was created long before RSA 155-E and long before the Carroll's purchased it. In today's climate, earth excavation operations are under strict rules and have to remove earth material, reclaim immediately after the material is removed, and the result is a reclaimed field-like area now well suited for other types of development. Excavation is just taking off resource, bringing down it to grade and reclaiming as you go; NOT leaving a permanent open excavation.

Comment was made that the commenter does not know of any reclaimed gravel pits.

Statement was made that her sand pit was reclaimed.

Mr. Carroll Jr pointed out that NS&G is reclaiming the third phase of Bill Ruger's gravel pit, and the Witham property has also been reclaimed.

Chair Howe redirected the discussion back to the topic.

Atty Britain summarized that this petition seeks to expand the Light Commercial District to encompass a number of properties on the westerly side of Route 10, and allow earth removal activities as defined in the Light Commercial Zone.

Chair Howe called for a brief recess @ 8:30 p.m.

Chair Howe reconvened the hearing @ 8:55 p.m.

Chair Howe began with questions from the Board. He reiterated that Board member comments tonight are entirely related to improving public understanding of this proposal and the regulations related to commercial excavation permitting and should not be taken as a predictor of what might happen regarding any future excavation permit application that should come before the Planning Board.

Mr. Wirkkala asked for clarification regarding how the proposed description of the new Light Commercial District would affect existing properties already in the existing Light Commercial District. However unlikely that they would choose to do so, by this change would they all be eligible for excavation – on both sides of Route 10?

Mr. Brittan said, yes that is correct.

Shaun Carroll, Sr. commented that there is no process quality material on the easterly side of Route 10, so earth excavation on the easterly side would not be practical.

Chair Howe stated that the proposed definition of Earth Removal Activities is: “All activities having to do with Earth Removal, including without limitation, all transportation activities related to or ancillary to same”. He commented that the phrase ‘without limitation’ seems a bit ambiguous. Some might interpret the phrase “without limitation” to mean without limit or with no limit. He asked for an explanation of the intent of that phrase.

Atty Britain stated anything that is involved in excavating materials from a site and transporting it to a destination is what is intended by that phrase. It is just making a point that transportation an example of what would be considered a part of that activity.

Chair Howe asked that if this zoning ordinance amendment passes, would the petitioner and Atty Britain agree that it would not alter in any way whatever authority the Planning Board may currently have to potentially limit transportation activities, such as the number of trucks and size of trucks.

Atty Britain stated that nothing in the proposal would limit any other Board to put limits on the number or size of trucks if those permissions are already given.

Chair Howe commented that RSA 155-E is the State statute regulating commercial excavation in New Hampshire. RSA 155-E:4 is called “Prohibited Projects” and 155-E:4. IV states a permit shall not be granted ‘when the issuance of the permit would be unduly hazardous or injurious to the public welfare.’ He asked if this section of the state statutes will still be applicable to the

applications for excavation permit everywhere in Goshen (including the Light Commercial District), if the proposed zoning ordinance amendment passes.

Atty Britain stated yes, the State statute would control.

Chair Howe commented that under Item 3 of the proposed zoning ordinance amendment has a phrase "...a permit must be obtained from the Planning Board according to provisions of NH state statute 155-E...". Under Item 4 of the proposed zoning ordinance amendment has a phrase "...a permit must be obtained from the Planning Board in accordance with the provisions of RSA 155-E..." He asked if Atty Britain agrees that should this zoning ordinance amendment pass, this statement essentially means "...in accordance with the provisions of RSA 155-E and Goshen's excavation regulations".

Atty Britain stated yes and explained that because Goshen enacted the excavation regulations pursuant to the Planning Board's authority under the authority of RSA 155-E. The language that appears in the amendment is the same language that appears in the current ordinance. The only change is that earth excavation would be a permitted use as opposed to a permitted use by special exception. The other language of the ordinance has not changed.

Chair Howe commented that the purpose of Section III. R. (Noise Regulations) is to define when a noise would be a violation. Thus if this proposed amendment passes, once a permit is granted, a gravel excavation operation within the Light Commercial District could create any amount of noise and not be in violation because it would be exempted from Section III.R. He asked if that was an accurate statement.

Atty Britain commented that yes that is what the proposed amendment says. The proposed amendment recognizes that earth excavation has a certain amount of noise that is just customary to that type of activity. NS&G has provided expert testimony in the past in which it has been that expert's opinion that the activity is fully in compliance with the noise ordinance, yet the ZBA disagreed. If it is a permitted use, then the noise regulations are not going to come in play to make that not a permitted use.

Chair Howe commented that Section III.4.B of the town's excavation regulations states: "when determining whether a proposed excavation should be prohibited because it would be unduly hazardous or injurious to the public welfare, as provided by RSA 155-E:4, IV, the Board shall give particular consideration to such factors as noise, traffic dust, fumes, vibration, or danger from operation". Thus Section III.4.B of the excavation regulations and RSA 155-E:4.IV are still applicable and relate to review and approval of excavation permit applications. He asked Atty Britain what noise standard he thinks the Planning Board could apply under Section III.4.B of the excavation regulations.

Atty Britain stated whatever standard is determined to be reasonable, and that this is not a discussion of every aspect of the excavation regulations. The purpose of this amendment is to allow earth excavation to be a permitted use in the Light Commercial District. Earth excavation would still be subject to all the other processes that need to be followed with respect to excavation activity. The appropriate time to talk about those issues out is when something is

applied for. Those criteria would not be eliminated. There is nothing in this amendment that attempts to undue any other regulation that governs this activity.

Mr. Carroll, Sr. commented that gravel operations are controlled by NH Mine Safety and Health Administration under US Dept of Labor and OSHA. Gravel excavation operations are mandated to keep the noise level below 85 dB. Employees cannot be exposed to noise greater than 85 dB. The only people noise affects are people that are doing the work. Gravel excavation operations are randomly inspected. NS&G was inspected last week and all of NS&G's equipment qualifies for less than 85 dB. The noise engineer that was hired stated that NS&G was actually less than 55 dB. The court sided with the Town even though there was no expert testimony provided on the Town's part. NS&G falls within the guidelines of federal regulations that should be good enough.

Chair Howe explained that the question was asked because this proposal was going to exempt earth excavations in the Light Commercial District from the Town's noise ordinances passed in 2008. There is also a 75 dB in our regulations.

Q: What is the town's noise dB limit?

Mr. Howe stated it is a complicated formula that is spelled out on page 10 of the ordinance.

Comment was made that the commenter is fine with the gravel excavations because she lives on Route 10 and the noise coming from the traffic is much worse than excavation activity. She stated that it does not seem fair to impose the noise ordinance on NS&G when there is worse noise in other areas from other sources.

Mr. Howe commented that there is a noise provision in the zoning ordinance that was written in response to other sources of noise. Once the ordinance is in place, complaints need to be directed to the Board of Selectmen for enforcement action.

Ed Peckham reiterated that if this amendment is passed, if this area is zoned Light Commercial, any excavation activity will fall under federal and state noise ordinances and NS&G will have to comply with those regulations.

Bob Bell made a motion to close the public portion of the hearing to proceed into deliberations. Mr. Wirkkala seconded the motion.

The Board discussed the amendment.

Mr. Wirkkala commented that he is sure that the voters will have the final vote on election day regardless whether or not the Planning Board votes to recommend or not recommend this petition.

Mr. Greenhalgh commended the Board for the work they do, even though he thinks the Board may sometimes be going in the wrong direction, he still thanked the Board for volunteering time.

Mr. Howe stated this Board was elected and elected to make decisions. Some of those decisions are hard, some of them the public agrees with, some of them they don't. Decisions are made at the ballot box. Mr. Howe commented that he wanted to establish a baseline of understanding on three points. His is not certain of what everybody knows, and he stated that he gets educated by the applicants, attorneys, the public input, and has gathered some information that not everybody may have.

First, The Master Plan. The primary purpose of the master plan is to establish the most appropriate future development of the community and to guide the Planning Board in performance of its duties in a manner that "...achieves the principles of smart growth, sound planning, and wise resource protection". (RSA 674:2). The 2002 Master Plan Vision Statement: 'Over the next ten years, Goshen should remain a small, rural residential community, with quiet, uncrowded living conditions, well-maintained buildings, roads, and recreational facilities, and undiminished scenic beauty.'

Secondly, Section III.R. of the Noise Regulation. These regulations were adopted by the voters in 2008 by a 2:1 margin. The regulations clearly address the 2002 Master Plan Vision statement with the emphasis on "quiet". The Planning Board undertook development of these regulations at the request of the Select Board, which had been receiving an increasing number of complaints about noise. The complaints were related primarily to ATV/motorcycle/snow machine use and automotive repair work, sometimes occurring late into the night. The regulations were not developed due to complaints about commercial excavation noise, yet they do now apply to all activities in town. In the past decade, the level of excavation has been relatively low based on the decade before, so the complaints of excavation noise has been low also.

Thirdly, RSA 155-E.4.IV. Prohibited Projects. If the Town ordinances did not address the subject of commercial excavation, this section states: "...the ZBA shall grant such a special exception upon a finding that: (a.) The excavation will not cause a diminution in area property value or unreasonably change the character of the neighborhood; (b) the excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof; (c) the excavation will not create any nuisance or create health or safety hazards; and (d) the excavation complies with such other special exception criteria as may be set out in applicable local ordinances. However, Goshen ordinances do address the subject of commercial excavation in a general fashion. Commercial excavation is allowed in any district by special exception. The special exception criteria for commercial excavation are the same as those for any other special exception request in Goshen, namely: "...that the proposed special exception shall 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." In addition, commercial excavations must adhere to the same standards as any other commercial use, namely that "...no business shall be allowed which could cause any undue hazard to health, safety, or property values, or which is offensive to the public because of noise, vibration, excessive traffic, unsanitary conditions, noxious odor, or similar reason" Thus hopefully, it is evident that Goshen's special exception and undue hazard standards contain some of the same provisions as present in 155-E and that Goshen ordinances hold all special exception requests and commercial use proposals to the same standards. To glean from 155-E.4 Prohibited Projects is that the State of NH clearly understood that not all applications for commercial excavation

should be approved. Some applications would likely be denied. There would be no other reason for a section called Prohibited Projects.

Mr. Howe commented that clearly the zoning ordinances can be changed by the voters, and there is a proposal that has been petitioned. The Board must decide whether to recommend or to not recommend. Mr. Howe recognized that he has one vote and no more influence than any other Board members.

Mr. Howe stated that he gave this proposal a lot of thought. He used five factors to determine an opinion whether to recommend or to not recommend. First, was a good process used for regulation development? A good process is more likely to ensure a good outcome. In the case of regulation development, the user, other stakeholders, and the regulator should be involved. In this instance, the user was definitely involved, some stakeholders may have been involved to some degree, but other stakeholders were probably not involved. The Planning Board was excluded from the development of this proposal. Thus the process was not conducive to development of good regulation. That still does not mean the outcome must not be good. A poor process could still achieve a good outcome.

Mr. Howe stated that a second factor he used to decide whether or not to recommend was is the proposed regulation ambiguous? There is some potential ambiguities in the proposed regulation since the noise ordinance would no longer be applicable, but the excavation regulations the Planning Board would be governing under mentions noise so there is some degree of ambiguity in terms of what noise standard would be used. There are perhaps any number of standards to use.

Mr. Howe stated a third criterion he used was is the proposed ordinance fair? Does the regulation deal fairly with all stakeholders? He stated that he did not feel it does. This regulation was clearly developed with the user in mind. It is not fair in two ways. It is not fair because all other commercial uses in the Light Commercial District must adhere to the noise provisions of Section III.R., while commercial excavation is exempted. But more importantly, it is not fair to others who live, work, and own property in the Light Commercial District and adjacent area who would no longer have the protections provided by Section III.R. He stated that while he is not taking a position on this idea, the fair approach to deal with the noise issue might have been to define within the ordinances that any business that met the provisions in III.R. were by definition “not offensive due to noise”. That would provide a specific measure by which to judge all commercial proposals, while maintaining protection against noise for the community under III.R. As written the proposal is not fair.

A fourth criterion was does the regulation promote wise land use? The Board has to decide if this proposal would promote wise land use, since the Board certainly should not recommend passage if it did not. Since not all proposals for the same type of land use carry with them equal impacts on the neighbors and community, there should be a way to differentiate between proposals. This goes for all types of uses from individual houses to subdivisions to commercial excavations. A four house subdivision would not have the same impacts as a forty house subdivision. Thus, just as all subdivisions are not equal, not all commercial excavation proposals are equal. Yet within the Light Commercial District, this proposal would consider that they are

all equal simply by definition despite the possibility of differing intensity (daily and annual excavation amounts) or different size (acres) or different duration (years). The inability of the regulator to evaluate the differing impacts of different proposals of any kind (any kind not just commercial excavations) does not promote wise land use.

The fifth and last criterion was does the proposed regulation accomplish the goal? If the goal is to guarantee that every earth material excavation application within the Light Commercial District is awarded a permit, then the proposal fails to achieve the goal. There will always be some chance a permit may be denied under the provisions of RSA 15-E:IV (When the issuance of the permit would be unduly hazardous or injurious to the public welfare). If the goal is to eliminate the ZBA from the process, then the proposal achieves that goal. That could be viewed as a mere objective toward achieving the larger goal and doubt the petitioner would view that achievement alone as a satisfactory outcome of this proposal.

Mr. Wirkkala thanked Mr. Howe for thoroughly going through the process and sharing it with the other Board members. He stated that the process of developing an amendment was also a concern for him since there was no public input or hearings in development of the language. As a result, he stated that he would not be able to recommend. He stated that he believes some people probably signed the petition because they are tired of hearing about the Carroll's lawsuits against the town and want them to come to an end. There can be completion, but this is the wrong way to resolve it. This amendment creates a district that is not sensible. The zoning ordinance as currently written is a good ordinance. People do have an opportunity to get a good hearing and the problem is not with the ordinance but with the applications, the intensity in trucking traffic and acreage that have been requested. The operation should be scaled to be sensitive to the nature of the proposed area of operation. There was a lot of talk about 5 acres open 5 acres closed and reclaiming as you go. I am not sure this applicant can do that, but that is beyond the scope of this subject. The current zoning could give NS&G an opportunity to get an approval if they choose to comply with limitations. Special consideration should not be giving to one industry in town – that is not good zoning.

Bob Bell commented that he is new to this and has not been in it from the beginning. That being said, he believes the Town needs to move forward with some form of commercial development. He stated that he believes people said that it is not necessarily bad to have an expanded commercial district, but he does have concern that this creates ambiguities. This amendment will not fix the problem. There are still other regulations that need to be adhered to, and a better way needs to be figured out to work through this. He stated that he is concerned this is like putting a Band-Aid on a leaky roof. He stated that he would like to see some kind of an effort among the town, Carroll Concrete and other people involved with commercial industry in town to come together and create a permanent solution for the Commercial District. He stated he cannot support the petition as written, but does support the idea of expanding the Commercial District.

Atty Britain emphasized that the goal is NOT to eliminate regulation from gravel excavation activity. The goal is to make the decision maker in one town board: the Planning Board. There are excavation regulations on a state level and on a town level. NS&G always gets stuck at the ZBA and never gets to the negotiating table of the Planning Board.

Ms. Phelan asked if the Board was opening the hearing up to public comment.

Chair Howe explained that he was allowing Atty Britain to answer questions from the Board.

Mr. Bell asked Atty Britain if there is room to modify the application while still supporting the voters.

Mr. Carroll Jr. explained that RSA 155-E has the same criteria as would be reviewed with the Planning Board. All excavation sites are finished. Under RSA 155-E, the applicant is required to go to the State, satisfy the criteria of RSA 155-E, then under this proposal would then go to the Planning Board. NS&G has already done that in a number towns and has never been in a situation where we can't get past the ZBA to be able to present to the Planning Board. NS&G has never once had an application revoked because things weren't done properly. There are fail safes for the town, and the State performs random inspections as well. Anybody can call in and have the State inspect a gravel operation at any time. If there is something being done that should not be, the State will shut down the excavation operation.

Mr. Howe commented that there are some aspects of the proposal that the town would probably agree with, but when asking for special provisions such as exemptions from noise regulation, there are other ways to do it. We are not against gravel excavation, but it needs to be done in a sensitive way. That is where a dialogue would be helpful.

Atty Britain stated that there is no provision to allow for a conceptual consultation within the ZBA regulations like there is with the Planning Board. Therefore NS&G would like to bypass the ZBA so discussions can take place with the Planning Board. The Planning Board process remains; this amendment only takes out the ZBA so that it can be dealt with under one forum. This proposal does not create ambiguity; it creates clarity to puts the applicant in one forum to get through the process. It does not undo anything the Planning Board has authority to do under its excavation regulations. NS&G is not trying to avoid regulation, only clarify it and put the applicant in one forum where there is an opportunity for better development to get through the process.

Mr. Howe commented that he had envisioned a discussion with Planning Board, ZBA, Select Board, and members of the public. One of the problems is the approach which was used to get the ZBA out of the process. There are different approaches to reach the same end. The Town has to be careful of setting precedent.

Atty Waugh reminded the Board that the purpose of the discussion should be to recommend or to not recommend.

Chair Howe agreed and did state he would like to attempt to sit down at a future date in a public forum and try to work something out with NS&G.

Rich Moen thanked the public for coming out to the hearing and listening to both sides. He assured the public that whatever the voters decide, the Board will work with the applicant and

the public with Goshen's best interest in mind. He stated that he has been on the Planning Board for 12 years and believes there is a good working relationship between the Board and the Carrolls. He stated that he would like to have the Planning Board more involved in the creation of an amendment, and perhaps make a larger commercial district. He stated he would like to have everybody involved in the creation of an amendment and more communication so that we can all get to a common goal. This is a start. Some of my questions were answered, some were not. He stated that he is in favor of the process.

Mr. Peckham stated that although he does not have as much experience as some of the other Board members, he sees this proposal as a clear, cut and dried issue. Mr. Carroll has presented a reasonable, straightforward amendment. Mr. Peckham stated that he endorses the petition.

Mr. Peckham made a motion for the Planning Board to recommend the petitioned article.

Mr. Moen seconded the motion.

VOTE: Mr. Peckham in favor.

Mr. Moen in favor.

Mr. Bell abstained.

Mr. Wirkkala made a motion for the Planning Board to *not* recommend the petitioned article. Mr. Howe seconded the motion.

VOTE: Mr. Wirkkala in favor.

Mr. Howe in favor.

Mr. Bell in favor.

The Planning Board voted to *not* recommend the petitioned zoning amendment.

Mr. Moen made a motion to adjourn. Mr. Peckham seconded the motion. All in favor. Meeting adjourned at 10:00 pm.

Respectfully submitted,

Linda Plunkett
Recording Secretary