

**Town of Goshen  
Zoning Board of Adjustment  
Minutes of October 15, 2014**

Members Present: Doug O'Clair, Chair; Ray Porter, Vice-Chair; Mike Chilson; Keith Hall; Steve Smith; Judy Dunn

Chair O'Clair called the meeting to order at 7:00 p.m.

**MINUTES**

The Board reviewed the minutes of August 19, 2014.

**Mr. Chilson made a motion to accept the minutes of August 19, 2014 as written. Mr. Hall seconded the motion. All in favor.**

**PUBLIC HEARINGS**

**Newport Sand & Gravel Co., Inc. - Special Exception Section V - Tax Map 203 Lot 2 - Anderson Gravel Pit Phase II**

Mr. Hall recused himself from this hearing since he is an abutter to the applicant.

Chair O'Clair appointed Judy Dunn, Alternate, as a voting member for this hearing.

Chair O'Clair explained the process for the public hearing and read the public notice.

*You are hereby notified of a hearing to be held at 7:00 p.m. on October 15, 2014 at the Goshen Town Hall concerning a request by Newport Sand & Gravel, LLC, Tax Map 203 Lot 2 for a Special Exception Application to Section V. Commercial Use (Articles F & I) of the Zoning Ordinance.*

*The applicant requests a special exception for the purpose of excavating commercial sand and gravel from an area known as Phase II, proximate to the currently permitted area known as Phase I. The proposed Phase II encompasses roughly 17.5 ± acres of the total 194.0 ± parcel.*

Richard Fraser, representative for Newport Sand & Gravel (NS&G), reviewed the progress of Phase I with the Board using photographs. The recent photographs taken in July 2014 show the reclamation of Phase I nearly complete. The gravel was excavated strategically leaving the esker for last in an effort to keep the noise at a minimum. The remaining slope was brought to final grade with a 20-foot reverse-benches every 20 feet to mitigate erosion. The southern corner is mined out for use as a sediment basin. Due to torrential rain this past summer, the hydro seeding has not been fully established. The areas that did not root due to runoff will be reseeded for a fourth time this coming spring 2015. The Goshen Planning Board granted a permit to excavate. A Wetlands Board permit was granted for installation of a culvert located between Phase I and

proposed Phase II, the culvert is installed and a roadway complete; and the Alteration of Terrain permit was updated with the State of NH in 2014.

Mr. Fraser reviewed the plan sheets submitted with the application. The plan sheets illustrate Phase II. The distances between the two phases is approximately 120 ft. There is a stream that runs between the two phases, hence the need for the aforementioned culvert. There is a berm and silt fence along the stream to protect the stream from runoff. When the berm is stabilized, the silt fence will come down. Phase II is 1.9 acres greater than Phase I, which was approved two years ago. The mining phase will be the same in Phase II as it was in Phase I. The third and last page of the plan sheets illustrate the best management practices techniques that will be utilized for the excavation and reclamation activities.

Mr. Fraser reviewed the application for a special exception as submitted to the Board. Page 1 is the application for Special Exception; Page 3 is the list of abutters; Page 4 is the Zoning Board's July 26, 2012 Notice of Decision granting the Special Exception for Phase I; Page 5 is the Planning Board's October 30, 2012 Permit for Excavation granted to NS&G; Page 6 is the June 8 2009 DES Alteration of Terrain Permit; Page 7 is the Wetland Board's July 2, 2014 approval for culvert installation. He skipped to Page 15 and explained that page 15 of the application addresses noise. Page 15 is a letter dated June 28, 2012 from Mark LaFave who, on June 1, 2012, conducted a noise sampling at the Anderson Pit. His conclusion was that the noise levels generated from the gravel pit were well below the threshold limit. Mr. Fraser stated that he is not aware of any noise or dust complaints.

Chair O'Clair stated that there have been some complaints, and they were addressed.

Mr. Fraser stated that in his personal experience as a real estate broker, gravel pit operations do not negatively impact property values. Page 19 of the application is an excerpt from a memo from Mary Pinkham-Langer from the NH Department of Revenue. In that memo she stated that *'more than 1/2 of the listed operations are located in residentially zoned areas. Some are rural but a large percentage of them are right in the middle of developed residential housing.'* Beginning on Page 22 of the application are guidelines for the Best Management Practices for Fueling and Maintenance of Excavation and Earthmoving Equipment, Stump and Brush Management, and a guide published by the USDA for Vegetating New Hampshire Sand and Gravel Pits. Mr. Fraser commented that basically these practices are a common sense approach.

Mr. Fraser returned to Page 9 of the application, which began the Special Exception criteria in the Goshen Zoning Ordinance. Mr. Fraser stated that the Proposed Phase II will be operated essentially in the same manner as Phase I. the access point primary established haul road, number of trucks and equipment operating the site, hours of operation, attention to excavation details and overall design, and the use of appropriate Best Management Practices will be employed at the new site. It should be noted that Phase II is located on 120'± from the southeast boundary of Phase I. Only a seasonal stream separates the two.

Based on the nature of the proposed project, meaning that it could be viewed as simply an extension of the existing excavation site, the statements which follow are almost identical to those which were submitted with the 2012 Special Exception application.. Simply stated, there

are no substantial changes to the overall plan that the ZBA previously approved just two years ago.

Section IX.B. lists the three criteria that need to be satisfied.

1. *The proposed special exception shall have no adverse effect upon the character of the area in which the proposed use will be located.* Keeping in mind that the current permitted, excavation activity from this property has been occurring for a period of two years. Newport Sand & Gravel has adhered to the conditions stated in land use permits, and conducts the operation as represented by company personnel. As a result, the company is not aware of any complaints or concerns relative to the operation of the site. As stated in the 2012 application, the Town of Goshen and the associated Route 10 corridor has experienced a continuous history of numerous operators excavating deposits of sand and gravel spanning several decades. There is nothing proposed in the application materials which will disrupt or unbalance the existing character of the area. Limited tree cutting and the existing, vegetative buffer afforded by the location of the Project Area will have a positive impact of reducing any potential visual, noise, fugitive dust impacts. The distance between the excavation site and dwellings will 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. Explosives will not be used in this project, nor is locating crushers on site being proposed. Water and/or calcium chloride will be used to suppress dust along the internal haul roads and operations area as necessary. the color of the haul road is darkening because it has been treated with liquid calcium chloride to mitigate dust. All gravel truck drivers leaving the site with material will insure the loads are covered to 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. 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 related Best Management Practices will mitigate potential noise issues. By managing noise related issues, NS&G will effectively address and meet the provisions of the Noise Regulation, cited in III.R. of the Zoning Ordinance. The traffic operations, capacity, and safety aspects of the area are not expected to change as a result of the excavation operation. This proposed excavation site will only serve to continue the recent historic level of NS&G truck trips over the State Route 10 corridor. Anecdotally, the company never received any complaints regarding trucks traversing town from south to north and vice versa during the previous decade. By this evidence, this activity will not adversely impact the character of the area. The proposed project will not cause a 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, the property which looks upon the Dais excavation site has sold a premium selling price a few years ago. Real estate values have been impacted by the regional/national economy, not by excavations located within or proximate to the town.

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 (Permit #6140). The permit contains no special conditions resulting from the type of proposed activity. Truck activity associated with the project will continue to blend with similar types of commercial vehicles utilizing the Class II highway. the transportation of material from the site will not account for increase in the total number of haul trucks currently utilizing the roadways. One would conclude that unreasonably accelerated, deterioration of highways and sidewalks is not expected to occur as a result of this project.

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 have a slope of 25% or greater shall occur without a special exception granted by the Zoning board of Adjustment following presentation of satisfactory evidence 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 Zoning Board of Adjustment in conjunction 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 by 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.

### Section V. Commercial Use

*A.1. - 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.* Please see response to Section IX.B. Zoning Board of Adjustment, Special Exceptions - the proposed special exception shall have no adverse effect upon the character of the area in which the proposed use will be located. All comments apply here. Potential hazards to human safety will be mitigated by the use of a chained 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 MBPs 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 (blasting) 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 traffic will result from the operation. It must be noted that operation is seasonal. Traditionally, traffic will travel to the site during the months of May through November. The trucks stopped hauling last week. 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.

Mr. Fraser stated the most of the remaining articles do not apply to this application. He stated that there will be no signs on Route 10. The applicant will be applying to the Planning Board for an excavation permit in the future. There will be no crushers on site. The Goshen regulations require 2" of top soil on reclaimed areas; NS&G has been using 6" - 8", thereby far exceeding the minimum requirements.

Chair O'Clair opened the meeting to questions from the Board.

Mr. Smith asked if there have been any complaints regarding work beginning beyond the allowed time of 7:00 a.m. - 5:00 p.m. and holidays.

Mr. Carroll stated that there was one person that was on the job site at 6:30 am, but that person was addressed and it did not happen again. The loader operator gets to the site around 6:00 a.m. to warm the equipment up. NS&G does not work on holidays that are recognized within their company. Columbus Day is not a recognized Holiday.

Chair O'Clair asked what NS&G's intention is regarding the noise from backup safety beepers on the equipment.

Mr. Carroll stated that the furthest section away will be excavated first, and there will be an area left in its natural vegetative state to muffle as much noise as possible. The reclamation equipment is required to have back up beepers, and nothing can be done about that. The excavation equipment has discretionary beepers, so they only beep if something crosses their line of path within the radar. Mr. Carroll stated that he will research if it is possible to install beepers on the reclamation equipment with a softer sound. Unfortunately, the safety measures are regulated and some are beyond local control.

Chair O'Clair asked when NS&G plans to begin Phase II.

Mr. Carroll stated that Phase I will be reseeded in the spring, then it will just take time for the grass to take root and grow, during which time Phase II may begin. The gravel amount in Phase II is about the same as in Phase I. There will be five trucks hauling approximately 16 loads each day. The company will be able to stockpile more sand from Phase II because there is not as much stone content as there was in Phase I.

Mr. O'Clair advised Mr. Carroll that there have been comments made from members of the public that there is frequently loud banging noises heard when the trucks enter the haul road, the thought being that the tail gates are not secured and hit the body of the truck when transitioning from Route 10 to the haul road and when moving on and off the bridge.

Mr. Carroll said he will find out which truck(s) are causing the noise and direct the driver to tighten up the tailgates.

Being no further questions from the Board, Chair O'Clair opened the meeting to public questions and input.

Keith Hall stated that he has had more than a fair amount of conversations regarding noise of trucks going in and out of the gravel pit area. He commented that some trucks are not coming to a complete stop when leaving the haul road and pulling out onto Route 10.

Michael Giff commented that from personal experience, he believes some of the banging noise is due to the trucks coming off Route 10 without properly slowing down which causes the tail gate to bang and also "body slamming". This contact also happens when transitioning to and from the gravel haul road onto the concrete bridge.

Mr. Carroll stated that he will address both those issues.

Kim Gaddes commented that the "Holidays" need to be clarified because the holidays that NS&G recognize are fewer than the others. She stated verbally and in writing that "I am not here tonight to lightly complain. I am here to voice my opinion and work with the ZBA and NS&G so my family can enjoy our home and property as well as the applicant can benefit from their property. Previously during these applications we had to voice our opinions for or against an excavation application from other peoples experiences with one or the Applicants' testimony. It is not necessary now for I have endured the negative impact of this gravel bank has forced on my family for a second year. The noise is unbearable and the fumes and dust have impacted us." Ms. Gaddes stated that there has been a significant amount of sand in their backyard pool. "Since the start, even during the haul road construction, we have listened to the constant, never stopping 'beep-beep-beep' from the machinery working in the pit to the trucks going in and out anywhere from 3.5 minutes to 5.9 minutes every weekday. And I state even on Holidays, the last one being Monday, Columbus Day." Ms. Gaddes stated that on September 25, NS&G was hauling from both the Anderson pit and the Davis pit, and there was noticeable truck congestion. Even if the trucks are not hauling, there is still noise generated from the pits from other pieces of equipment. "This year, the pit opened April 15, not May as stated by Mr. Fraser pg. 3 of 7/25/12 minutes. He also stated on pg. 4 'the operation will not be offensive to the public as a result of noise'. that statement is proving to b false. I state here the machinery and hauling has over the years started before and after the permitted hours on a regular basis." Machines can be heard at 5:30 a.m., and some days they go beyond 6:00 p.m. "See complaint filed with ZBA November 2013 and a letter back from Mr. O'Clair. the other abutters should have been asked in addition to Keith Hall and Mr. Carroll, Jr., to confirm what I state was in fact accurate and still is." Ms. Gaddes stated that some people do not even want to come in anymore because they feel their concerns are falling on deaf ears. :Up until the last few weeks, the noise has begun anywhere from 5:30 a.m. and ending sometimes near 6:00 p.m. during the public hearing in 2012, I asked the ZBA (pg. 8 minutes) if the haul road could be moved. Mr. Carroll, Jr. commented 'it would be feasible...' and Mr. Carroll, Sr. said 'At this point it would be illegal for NS&G to ask to change the application as submitted'. Mr. O'Clair said 'the applicant cannot change the components of the application once they receive approval from the ZBA'. This application has not been approved, therefore the ZBA can request changes to the application before it is accepted. I am here tonight to ask the board to deny this expansion and close the pit when this permit expires, UNLESS, the haul road is moved to Lear Hill where Mr. Carroll owns the abutting properties and the open berm is closed to minimize the noise. Respectfully submitted, Kim P. Gaddes" Ms. Gaddes reiterated that at her home, she can hear it, smell it, and see it; and

she has witnesses and photographs to support her statements. She stated that properties that are at a higher elevation hear the noise more than properties at lower elevations. She pointed out that if the haul road is going to be changed from Route 10 to Lear Hill Road in order to cut down on the noise, dust and odor impact on abutters, now is the time to set that condition - before the applicant applies to the Planning Board.

Chair O'Clair commented that he did talk with Mr. Hall regarding the excavation activities beginning and ending earlier and later than approved. He stated that he parked near the haul road and pointed out the driver who was not complying to Mr. Carroll, who subsequently addressed it. Chair O'Clair stated that since he did not hear anything more, he assumed the problem was solved. He stated that if the egress is redirected to Lear Hill, that would create a whole new excavation application, which would not be substantially different from the one that was denied.

Mr. Carroll commented that moving the egress to Lear Hill would have been feasible in the beginning of the process, but is no longer. He also stated that there is a time stamp created when trucks are loaded, and those stamps were reviewed and found to be compliant with the allocated time. He commented that the noise that is heard prior to 7:00 may be from the equipment on site being started up and moving around, but not hauling.

Ms. Gaddes stated that she has witnessed loaded trucks going in and out of the pit at 6:30 a.m.

Mr. Carroll stated that he will look at the reports and make sure nothing goes in or out loaded before 7:00 a.m. next year. He also explained that the reason he was operating out of both pits at the same time was because the Town requested him to do so in order to stockpile their sand for road maintenance for the winter.

Mr. Smith asked Ms. Gaddes what would make the situation workable if haul road was to remain open.

Ms. Gaddes stated that the early noise of jake brakes, trucks banging, and excavation activity would stop.

A member of the public asked what was entailed in the original plan.

Chair O'Clair explained that the original plan proposed the entrance and egress off Lear Hill Road. That plan was denied. In order to re-apply for excavation on the same site, the subsequent application needed to be "significantly different" from the one that was denied. The significant difference in the plan was the moving of the haul road to the Route 10 location. He pointed out that this current location is also in the light commercial district.

Ms. Gaddes suggested that the Board not make a decision on the application this evening and research the abutters' reception to moving the haul road to Lear Hill Road; and perhaps seek legal counsel regarding the legal ramifications, if any, of changing the application back to the original egress.

Mr. Carroll stated that he is not going to propose any changes to the application or the egress.

Mr. Chilson commented that changing the haul road from Lear Hill Road to Route 10 was the crux of the Phase I application; and he does not see how the Board can legally require the applicant to change the egress back on the plan as well as going to the expense of its development.

Mr. Porter offered Ms. Gaddes the opportunity to present any **new** evidence or testimony she may have.

Being no further comment from the public, Chair O'Clair closed the meeting to public input to begin Board deliberation.

Mr. Smith commented that he likes the plans and that it makes economical sense to continue to doing what they are doing. But, there seems to be noise issues that need to be addressed, which the applicant seems to be going to do. He commented that his main concern is the noise and the entry/exit and the beeping of equipment.

Mr. Chilson commented that everything that he sees in the plan seems to have been done in best practice. The applicant has addressed issues as they have come up, and the excavation will not go on forever. There has been a lot of benefit to the Town as well as good reclamation efforts, which will be a valuable asset to the community.

Ms. Dunn commented that it may be helpful to monitor the haul road with cameras in order to make sure the workers staying in compliance with the allowed hours of operation. Also, the applicant should respect the work holidays of the public and abutters. She commented that the land looks nice, similar to Vermont's rolling hills.

Mr. Porter commented that this was a great presentation, and the applicant has remained diligent in addressing important issues. The mystery of what to expect is gone - the applicant has been there for the past two years, and we now know what to expect. If there were a lot of negative issues in the activity of Phase I, there would be more people at this hearing. It is impossible to excavate without some degree of noise, and unfortunately some people will be impacted. He commented that he thinks the issue that needed attention have been addressed, and he is prepared to vote on the application this evening.

Chair O'Clair commented that he also feels that if Phase I was such an issue, then there would be more people at the hearing. He stated that he is not insensitive to the noise issue, and he would like to think the applicant will be good stewards to mitigate the noise, even though it cannot be completely eliminated. He requested that the applicant and the community work together and recognized that it is not easy to oversee each person on site every minute of every day. Also, there is a benefit of Phase II that it will be further from the center of town, and he cannot see how the Board can *not* approve this application since Phase I has been approved and operated so well.

**Mr. Chilson made a motion to grant the Special Exception to Section V. Commercial Use (Articles F&I) of the Zoning Ordinance as requested based on the information and testimony given at this hearing. Mr. Porter seconded the motion. All in favor.**

Mr. Carroll stated that he is willing to place security cameras on site to monitor the activity at the site.

Ms. Gaddes commented that she would like to have consideration for each other and be good neighbors.

## **OTHER BUSINESS**

### **Planning Board Annual Gravel Pit Review**

Mr. Carroll agreed to be at the Planning Board meeting on October 16, 2014 in order to set up a time for the annual gravel pit site review.

**Mr. Porter made a motion to adjourn. Mr. Chilson seconded the motion. All in favor.**  
Meeting adjourned at 9:00 p.m.

Next meeting: November 12, 2014

Respectfully submitted,

Linda Plunkett  
Recording Secretary