

**Town of Mount Desert Planning Board  
Planning Board Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, March 13, 2019**

**Public Present:**

Representative for Harold MacQuinn Inc. Paul MacQuinn, Representative for Freshwater Stone Andy O'Deen, Kate Foster, Attorney for the Applicant Ed Bearor, Elizabeth Halpern, Christopher Rawls, Attorney for the Planning Board James Collier, Laurie Shencavitz, Gerald Shencavitz, Attorney for the Shencavitz' and the Aylen's Dan Pileggi, Kelly O'Neil, Storey Litchfield

**Board Members Present:**

David Ashmore, Chairman Bill Hanley, Joanne Eaton, Beth Renault, Tracy Keller

**I. Call to Order 6:00 PM**

Chairman Hanley called the meeting to order at 6:03PM. Board members present were noted.

New Planning Board Alternate Member Tracy Keller was introduced.

**II. Approval of Minutes:**

**March 6, 2019:** MOTION: Ms. Eaton moved, with Ms. Renault seconding, approval of the Minutes as presented. Motion approved 3-0-2 (Ashmore and Keller in Abstention)

**III. Public Hearing:**

*A. Land Use Zoning Ordinance, Official Land Use Map and Public Road Acceptance Ordinance and Sale of Food and Merchandise Ordinance Amendments for the 2019 Town Meeting.*

The Public Hearing for these items was completed and all items were addressed at the March 6, 2019 Meeting.

**IV. Subdivision Application(s):**

**Public Hearing: 6:15 PM**

**A. Subdivision Approval Application # 002-2018**

**NAME:** Deep Cove Holdings II, LLC

**AGENT:** Greg Johnston, G.F. Johnston and Associates

**TAX MAP:** 012 **LOT:** 005 **ZONE(S):** Shoreland Residential 3 (SR3)

**PURPOSE:** The Construction or placement of 3 or more dwelling units on a single tract or parcel of land within a 5-year period.

This Application was retracted.

**V. Other**

1           A. *Procedural Discussion with Edmond J. Bearor, Esq. re: Harold MacQuinn, Inc./Fresh*  
2           *Water Stone & Brickwork, Inc. Quarry License Application*

3           Attorney James Collier summarized the court's decision - that the Applicant had the right to  
4           proceed and the application should be heard.

5  
6           Attorney Collier opined that the first decision was whether the issue should be continued  
7           from the point it was left off, or whether the issue should restart start from the beginning.  
8           Additionally, Attorney Collier hoped a firm meeting schedule would be set. Mr. Collier  
9           suggested a weekly schedule of meetings to discuss the Application. If it was deemed an  
10          expert was required, then scheduling would have to adjust to accommodate such a visit.

11  
12          Attorney Collier felt that the parties present needed to come to an agreement on Alternate  
13          Board Members and their role on the process. It was noted that at this time the Planning  
14          Board has a full Board of five members and two alternate members.

15  
16          Attorney Ed Bearor had no dispute with Attorney Collier's statements. Attorney Bearor  
17          stated that the Applicant had no desire to start over from the beginning of the review  
18          process. The Planning Board reviewed each of the criteria separately and voted on each.  
19          Attorney Bearor recalled there were only two review standards left to address: Noise, and  
20          Screening and Buffering. The Applicant's intention would be to go forward with these final  
21          two review standards. Attorney Bearor recalled that the last time the Planning Board met  
22          on this issue, bringing in an expert on noise was discussed. The quarrying operation has  
23          changed in the two years since the Application has been discussed. The Applicant is  
24          assessing how best to approach the issue of noise.

25  
26          Attorney Dan Pileggi pointed out that no final vote on the Application was taken by the  
27          Board. He was reluctant, procedurally, about moving forward with new members who have  
28          not reviewed the rest of the Application. Attorney Pileggi agreed that there are two final  
29          review criteria that have not yet been addressed, and he had no problem with taking the  
30          Application up from the point at which it left off. The previous Board made no final  
31          decisions on any part of the Application. Mr. Pileggi objected to the two new Board  
32          Members being able to vote on the final two issues, and then vote on the full Application's  
33          approval. He had hoped the Board would be able to reconstitute at least a quorum of the  
34          Board Members who previously voted on the Application. Attorney Pileggi would prefer to  
35          wait till the next meeting to assess the situation better.

36  
37          Chairman Hanley suggested the discussion of the roles of the Alternate Members and new  
38          Board Members should be addressed first.

39  
40          Attorney Collier suggested the new members swear, to all parties' satisfaction, that they  
41          had reviewed all the material. The final two criteria could then be reviewed and voted on,  
42          and a review of the final specifications and conclusions of law could be made. Or, the Board  
43          could make a quick review of the previously discussed issues before proceeding. Mr. Collier

1 felt the votes on the criteria are not final until the final vote is taken. It was possible the  
2 Board might want to revisit a previously discussed issue.

3  
4 Chairman Hanley said he's encouraged the Alternate Members to participate in the process,  
5 and they can do so as non-voting members. If the process extends into the summer  
6 months, there may come meetings where not all members can be present. He felt  
7 maintaining a full Board of participating members was crucial, and if the discussions begin at  
8 the point where they were left off, then all members should become knowledgeable in the  
9 process up to that point.

10  
11 Ms. Eaton felt the responsible thing to do was to review the Application and the process  
12 that has gone before. She added that CEO Keene has made it a requirement of those  
13 members who want to sit on the Board for this issue to review everything that has gone on  
14 before. Some members have already started educating themselves on the issue.

15  
16 Ms. Keller shared that she's spent approximately eight hours studying the materials  
17 presented and Minutes and Appellate materials and has begun the process of listening to  
18 the recordings of the meetings. She was happy to re-visit any previously discussed issues  
19 that become pertinent as the process moves forward.

20  
21 Ms. Renault worried the work schedule for her business may make regular meetings  
22 difficult. She suggested she move to an Alternate Board Member position, moving an  
23 Alternate Board Member into her Full-Time Member position.

24  
25 Ms. Eaton noted she will be out of Town the month of May.

26  
27 Attorney Pileggi reminded the Board that at the last meeting the Planning Board held on this  
28 issue, the Board had ordered the Applicant to pay for an expert witness to review the noise  
29 remediation plan. This never happened. Attorney Pileggi felt that moving forward without  
30 that information is not acceptable. Attorney Pileggi recalled Attorney Bearor mentioning a  
31 new noise remediation plan. Until any new plan is seen a noise remediation expert will not  
32 be able to review it determine its adequacy. Attorney Pileggi can't agree to a schedule that  
33 does not give time for this review and an opportunity to evaluate the issue. Chairman  
34 Hanley agreed this was one of the key considerations the Board needs to discuss. If the  
35 Planning Board agrees to begin where the issue left off, then there needs to be clarity on  
36 exactly where that point is, and agreement regarding what that will involve. Chairman  
37 Hanley noted noise review, the expert witness, an escrow account and how such an account  
38 will be handled all require discussion. If the Board plans to start from where the issue left  
39 off, the Board needs to be fully informed of the process that's occurred up to that point.

40  
41 There are four new Board Members (two Full-time, two Alternate), none of which have ever  
42 been to the site. Chairman Hanley felt another site visit to bring Board Members up to  
43 speed was necessary.

44

1 Mr. Ashmore felt the review of the Application should start from the beginning. Listening to  
2 the Meeting recordings can be tedious and reading the records and materials does not  
3 provide the full essence of what went on at the meeting.

4  
5 Attorney Bearor stated the Applicant has no interest in moving backward in the process.  
6 There was a quorum at each meeting, the issues were heard, and votes were taken.  
7 Attorney Bearor disagrees with Attorney Collier's assessment that the votes previously  
8 taken were open to discussion. To go back and revisit each issue seems arduous. Attorney  
9 Bearor finds no issue with how the Board is constituted. It would be more worth the  
10 Applicant's time to take the issue to court than to agree to starting at the beginning.

11  
12 Mr. Shencavitz, abutter to the quarry, agreed with Attorney Collier's statement that every  
13 decision previously made is subject to final consideration at the culmination of the entire  
14 process. The challenge is how the new Board Members can digest several years' worth of  
15 process. Mr. Shencavitz alleged that the tapes were difficult to hear, and recordings of the  
16 most critical meetings recordings were missing. Mr. Shencavitz alleged the Minutes were  
17 cryptic and information was missing from them. Mr. Shencavitz reminded the Board that a  
18 noise expert had previously testified at a meeting and the new Board Members would be  
19 unable to hear those comments. He requested the Board remember that the homes in the  
20 community and the resident's quality of life are at stake. Mr. Shencavitz reiterated his  
21 opinion that new Board members could not glean the full impact of the process through the  
22 meeting recordings or Minutes. He felt the process needed to start from the beginning.

23  
24 Chairman Hanley noted that Board Member Meredith Randolph was not in attendance. He  
25 and Mr. Ashmore agreed they would like her input on the decision to start from the  
26 beginning versus starting from where the meetings left off.

27  
28 Attorney Collier noted that traditionally, it would be expected that the new Board Members  
29 would catch up. If, at the time of the final vote, there is deemed a need to revisit an issue, it  
30 can be done then.

31  
32 Chairman Hanley suggested starting where the Board left off, with a diligent effort to bring  
33 the newest members up to speed. Attorney Collier suggested a delay until the new Board  
34 Members had the chance to digest the materials. Chairman Hanley suggested some  
35 information gathering sessions, and he reiterated that a site visit was necessary.

36  
37 Attorney Pileggi suggested that if the Board decides to begin at a point other than the  
38 beginning, then the statement that the new members swear to must include significant  
39 detail regarding exactly what they did to come up to speed on the issue. Board members  
40 will require more than a review of Minutes and Meeting recordings to bring them up to  
41 speed. There are large volumes of materials submitted.

42  
43 Chairman Hanley opined that a series of informational meetings would be prudent to help  
44 bring new Board Members up to speed.

1  
2 Attorney Collier felt that a statement can be drafted by the attorneys involved for the new  
3 Board members to sign. Attorney Pileggi felt the new Board Members should write down  
4 the efforts they made in bringing themselves up to speed. Attorney Collier wondered if  
5 informational meetings could be done, given the contentious nature of the subject. Any  
6 meeting with three or more Board Members in attendance have to be public meetings.  
7 However, it does not have to be a public hearing.

8  
9 Mr. Ashmore asked about the testimony regarding sound. Chairman Hanley felt that it  
10 would be critical to have all Board Members fully informed on the issue of sound. It may  
11 entail testimony being reheard, if the Board deems it necessary in order to fully understand.

12  
13 Attorney Bearor agreed that the issues of noise and buffering and screening should be full  
14 discussions of both issues.

15  
16 It was agreed to have preliminary workshops for the Board Members. Chairman Hanley  
17 estimated one to three meetings should be enough, along with the review of the materials.  
18 Attorney Collier suggested new Board Members note questions they come across as they  
19 review the materials, that can then be discussed at the workshops. Mr. Ashmore noted that  
20 doing it this way would satisfy his concerns regarding process. He asked if, during the  
21 workshop process, an issue is found to be of concern to Board Members, would the Board  
22 have the ability to revisit that issue. Attorney Bearor disagreed with revisiting issues. The  
23 issues were voted on, and even if Board Members might later wonder why they voted the  
24 way they did, the vote remains.

25  
26 Hall Quarry resident Kelly O'Neil asked for clarity on where the review will start. The  
27 question had not been formally decided. However, Chairman Hanley guessed the Board  
28 would agree to start at the point of the issues left to be voted on; the beginning of the noise  
29 review.

30  
31 Attorney Pileggi asked about the noise expert brought in previously. Chairman Hanley felt  
32 the Board would want to hear the details of the issue of noise in its entirety, prior to making  
33 a decision. This may involve having the noise expert return. Attorney Collier felt this was a  
34 point to consider at the workshops.

35  
36 Chairman Hanley envisioned an overview workshop, a site visit workshop, and a follow-up  
37 workshop. He asked for opinions on the scheduling.

38  
39 Ms. Eaton pointed out that meetings would have to be advertised. Chairman Hanley hoped  
40 to schedule the workshops at the next regularly scheduled Planning Board meeting. Ms.  
41 Renault's role could be discussed then too. Mr. Hanley felt Board Members Randolph and  
42 Anastasia should be in attendance for the scheduling discussion.

43

1 Chairman Hanley suggested continuing this meeting to a date certain of the next Planning  
2 Board Meeting, scheduled for March 27, 2019. The first informative workshop could be  
3 scheduled then.

4  
5 Attorney Collier asked if the Board would find useful his bullet-point worksheet of pertinent  
6 events timeline CEO Keene compiled for him. Chairman Hanley felt it would be good to  
7 have the timeline at the first workshop, but not necessary for the March 27, 2019 meeting.

8  
9 Chairman Hanley reiterated the March 27, 2019 meeting will be used to schedule the  
10 workshops and any other preliminary work, and not a workshop itself. He added that the  
11 Board seemed to be in agreement that Application discussion will begin at the beginning of  
12 the discussion on noise. In the meantime, the new Board Members will study the materials  
13 of the past meetings.

14  
15 Attorney Pileggi restated that the critical point was in the preparation of the new Board  
16 Members.

17  
18 Chairman Hanley asked about the accessibility of the site. Applicant Paul MacQuinn noted it  
19 was not currently accessible, but it could be plowed.

20  
21 Chairman Hanley felt the workshops would most likely consist of an informational  
22 workshop, a site visit workshop, and then a final wrap-up workshop. By that time a firm  
23 schedule should be created to address the issue in a timely manner. Attorney Collier  
24 suggested weekly meetings. Chairman Hanley agreed firm meeting dates should be  
25 scheduled and they should be weekly if possible.

26  
27 Chairman Hanley and Ms. Eaton suggested that at the March 27, 2019 meeting a discussion  
28 and perhaps vote could be made to determine who would be full time voting members and  
29 alternate members. Attorney Bearor and Attorney Pileggi both agreed.

30  
31 Attorney Collier felt the timeline of pertinent events only required the court information to  
32 be added and could be distributed. Ms. O'Neil inquired whether the public would have  
33 access to the timeline. Attorney Collier affirmed they would.

34  
35 Chairman Hanley clarified that the workshops and next week's meeting would be public  
36 meetings. They would not be Public Hearings. And therefore, public comment would not be  
37 part of the meeting.

38  
39 Attorney Bearor asked if the timeline document had been originally prepared in support of  
40 the Town during litigation. Attorney Collier reported it had not; the timeline was simply a  
41 memory aid. It was confirmed they could be distributed to the Board.

42  
43 MS. EATON MOVED, WITH MS. RENAULT SECONDING, TO CONTINUE THE MEETING TO THE  
44 MARCH 27, 2019 PLANNING BOARD MEETING. MOTION APPROVED 5-0.

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**VI. Adjournment**

MS. EATON MOVED, WITH MR. ASHMORE SECONDING ADJOURNMENT. MOTION  
APPROVED 5-0.

The Meeting adjourned at 6:58 PM.