

**Town of Mount Desert Planning Board
Regular Meeting Minutes
Meeting Room, Town Hall
6:00 PM, March 12, 2020**

Public Present:

Attorneys for the Applicant Katie Foster and Edmond Bearor, Applicants Paul MacQuinn and Andy Odeen, Maureen McGuire, H. Scott Stevens, Howard Colter, Attorney for several Hall Quarry residents, Roger Katz, Janet Clifford, Laurie Shencavitz, Gerald Shencavitz, Janet Ellis, Nicholas Miller, Dick Broom, Attorney for the Shencavitz' and Aylens Daniel Pileggi, Elizabeth S. Roberts, Attorney for the Planning Board James W. J. Collier, Charles Wallace, Kelly M. O'Neil, Marianne Buchala, Bill Buchala, Jan Coates, Pam Bowie, Keith Bowie, Steve Krasinski, Marilyn DiBonaventuro, Kim Heist, Andrew Gilmore, David Gilmore

Board Members Present: Chair Bill Hanley, Dave Ashmore, Meredith Randolph, Christie Anastasia, and Tracy Loftus Keller

Ms. Loftus Keller is a non-voting member.

I. Call to order 6:00 p.m.

Chair Hanley called the Meeting to order at 6:00PM. Board Members were noted.

MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, TO MAKE TRACY LOFTUS KELLER A VOTING BOARD MEMBER FOR THE MEETING. MOTION APPROVED 4-0-1 (LOFTUS KELLER IN ABSTENTION).

No Conflict of Interest was found.

It was confirmed that there was adequate Public Notice. Abutters were notified.

II. Quarrying License Application:

Public Hearing:

A. Quarrying License Permit #001-2014

OWNER(S): Harold MacQuinn, Inc.

OPERATOR(S): Fresh Water Stone & Brickwork, Inc.

AGENT(S): Steven Salsbury, Herrick & Salsbury, Inc.

LEGAL REPRESENTATION: Edmond J. Bearor, Rudman Winchell

LOCATION: Off Crane Road, Hall Quarry

TAX MAP: 007 LOT: 075 **ZONE(S):** Residential 1 (R1)

PURPOSE: Quarry License Application – Section 6.2 Performance Standards
for Existing Quarries – J. Noise.

Chair Hanley read the Motion of the November 20, 2019 Planning Board Meeting:

"MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, PURSUANT TO QUARRYING LICENSING ORDINANCE SECTION 4.4 THAT THE TOWN ATTORNEY IN CONCERT WITH CEO KEENE ASK AN

1 *EXPERT IN SOUND FOR A PRICE QUOTE FOR A WRITTEN REPORT ON THE FOLLOWING TWO*
2 *MATTERS: #1 - FOR A SMALL QUARRY OF ONE ACRE WHAT ARE THE BEST PRACTICABLE MEANS*
3 *OF REDUCING NOISE, USING THE MEANS DESCRIBED IN QUARRYING LICENSING ORDINANCE*
4 *SECTION 6.2.J. #2 – GIVEN THE APPLICATION, AS SUMMARIZED IN A MEMORANDUM FROM THE*
5 *APPLICANT TO THE BOARD DATED NOVEMBER 15, 2019 AND THE CONDITIONS PROPOSED BY*
6 *THE APPLICANT HOW WELL HAS THE APPLICANT MET THE STANDARD OF THE BEST*
7 *PRACTICABLE MEANS OF REDUCING NOISE. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN*
8 *ABSTENTION)."*

9
10 Attorney for the Planning Board James Collier reported that he sent the Motion cited above to
11 two sound experts: Kavanaugh Tocci and Syntech. He requested pricing for the work as stated
12 in the Motion. Both experts submitted price quotes.

13
14 Concurrent to this, Attorney Collier connected with Nicholas Miller, a retired sound expert. Mr.
15 Miller offered his services regarding the issue at hand. Attorney Collier talked to both sound
16 experts he reached out to. Both spoke highly of Mr. Miller.

17
18 Chair Hanley summarized that the Public Hearing was now closed. The Board is deliberating on
19 Section 6.2.J, Noise. The Board has heard opinions from sound experts representing both the
20 Applicant and some of the residents of Hall Quarry. The Board felt an independent sound expert
21 was required to offer guidance to the Board. The Board directed Attorney Collier to engage a
22 sound expert for this purpose.

23
24 The Board set within their Motion of November 20, 2019 and in connection to the Applicant's
25 memorandum of November 15, 2019, some specific tasks for a sound expert to weigh in on. It
26 was Chair Hanley's hope the Board could address the list included in the Applicant's
27 memorandum of November 15, 2019 point by point with the help of Mr. Miller.

28
29 Attorney Collier made note that at the November 20, 2019 Planning Board Meeting Attorney for
30 the Applicant Bearor intended to discuss the issue of decibels with the Applicant and whether
31 the Applicant would willingly submit to a set decibel level.

32
33 The Public Hearing was closed; therefore, opening statements were not appropriate at this time.
34 Attorney Bearor stated the Applicant had no statement regarding the question of willingly
35 submitting to a set decibel level.

36
37 Attorney Collier noted the presence of Attorney Roger Katz, representing several Hall Quarry
38 residents. Attorney Collier felt the opportunity for additional commentary by another attorney
39 has passed. The Board has closed the Public Hearing and is currently in deliberations.

40
41 Attorney Katz stated he was representing Hall Quarry residents Janet Clifford, Betsy Roberts,
42 Kelly O'Neil, Maureen McGuire, H. Scott Stevens, Fran Lehman, Carey Kish, Thomas Boatwright,
43 Charlotte and Seth Singleton, and William and Pam Bowie. A list of the residents Attorney Katz
44 is presenting was provided to Attorney Collier.

45
46 Attorney Katz raised a Point of Order. The meeting was publicized as a Public Hearing. CEO
47 Keene stated that she was absent from the previous meeting and therefore not aware the Public

1 Hearing phase of the process had closed. This resulted in the Meeting publicized as a Public
2 Hearing in error.

3
4 Attorney Collier suggested that if publicized as a public hearing, the Board can simply close it.
5 Chair Hanley referred to Page 9, Line 18 of the November 20, 2019 Planning Board Minutes
6 stating that *"Chair Hanley closed the Public Hearing."* The Board expressed their agreement that
7 the Public Hearing was closed.

8
9 MR. ASHMORE MOVED, WITH MS. RANDOLPH SECONDING, TO HEAR FROM MR. MILLER.
10 MOTION APPROVED 5-0.

11
12 Chair Hanley read Section J, Noise from the Quarrying Licensing Ordinance:
13 *"The best practicable means of reducing noise shall be employed which may including(sic) the*
14 *use of sound reduction equipment, acoustic enclosures or sheds, limiting on-site speeds to no*
15 *more than 10 mph, or other best industry practices for noise attenuation, to the extent permitted*
16 *by state and federal laws and regulations."*

17
18 The Motion of November 20, 2019, read earlier in the meeting, referred to the Applicant's
19 November 15, 2019 Memorandum, which included a list of practicable steps to reduce noise
20 itemized by the Applicant. Chair Hanley hoped to hear comment from Mr. Miller on:

- 21 - Mr. Miller's opinion of the efforts listed by the Applicant in the November 15, 2019
22 Memorandum.
- 23 - Mr. Miller's views of the Best Practicable Means for a quarry of one acre or smaller in size
24 using the means described in the Quarrying Licensing Ordinance.
- 25 - Mr. Miller's opinion of the Applicant's efforts as noted in the Application.

26
27 Retired Sound Expert Nick Miller listed examples of his professional experience. He stated he
28 had no Conflict of Interest in the issue at hand. His intention was to provide insight without
29 getting too technical. Mr. Miller stated he has reviewed the information provided to him. He
30 felt previous consultants produced quality work on the issue. Mr. Miller found nothing during
31 his review that he deemed inappropriate or biased in any way. Mr. Miller stated the tests
32 conducted on the portable barrier were appropriate, and it is standard practice to shield a
33 stationery noise source. The agreement not to drill during the months of July and August as
34 stated in the November 15, 2019 Memorandum and other offers of noise mitigation offered by
35 the Applicant were generous in Mr. Miller's estimation, in comparison to what he's seen during
36 his career.

37
38 Mr. Miller voiced two concerns. Depending on where the Applicant might be drilling it could be
39 difficult to move or orient the barrier to the best benefit for the community. He referred to Mr.
40 Wallace's report regarding the berm and the opinion that it would not help limit noise.

41
42 Attorney Bearor objected to the possibility of Mr. Wallace offering further testimony. He felt no
43 dialogue should ensue between Mr. Wallace and Mr. Miller.

44
45 Mr. Miller explained that noise mitigation must do three things. It must be effective; it must be
46 physically feasible, and it must be enforceable or apparent that the procedures required have
47 been done. It appeared to Mr. Miller that the berm was determined by Mr. Wallace to be not
48 effective.

1
2 A berm's effectiveness is dependent on elevations. For a barrier like a berm to be effective, it
3 must break the line of sight, or it must be close to either the source or the receiver of the noise.
4 A barrier breaking the line of sight by two feet results in approximately a 5-decibel reduction in
5 sound. The more the line of sight can be broken, the more decibel reduction in sound results.
6 Based on the analysis presented, Mr. Miller felt the berm was ineffective.

7
8 Reviewing the decibel levels measured in the neighborhood, Mr. Miller agreed that the ambient
9 noise in Hall Quarry was quiet. He believed the mitigation measures suggested would result in
10 quarry noise in the 60s decibels range, with occasional exceedance of that range. Sustained
11 noise above a level of 60 decibels would result in trouble being heard during conversation
12 outside. There is no doubt the noise of the quarry will be heard.

13
14 Regarding whether further noise mitigation efforts could be made, the Applicant states they
15 have removed tonal components in backup alarms.

16
17 Chair Hanley wondered if Mr. Miller would offer an opinion on the list of equipment identified
18 by the Applicant. Mr. Miller stated that he did not have the kind of expertise to offer an
19 opinion. Decibels are measured differently by different manufacturers. He felt the list offered is
20 an honest effort to use equipment that will minimize the noise produced.

21
22 Mr. Miller felt that Best Practicable Means must be used to determine these things. For
23 example, a higher berm is a better noise mitigator. However, a berm can be built only so high
24 before it's no longer cost effective, structurally sound, or physically possible; meaning it's no
25 longer practicable.

26
27 Attorney Collier inquired whether the methods proposed to mitigate the noise listed by the
28 Applicant are the best available? Did Mr. Miller know of other mitigation efforts that could be
29 tried?

30
31 Mr. Miller suggested looking up each piece of equipment to determine its function, and then
32 compare it to other pieces of equipment with the same function with regard to the level of
33 sound produced. A large amount of work would be required to research such a list. The
34 movable barrier and the quieter backup alarms were both measures that should be effective in
35 noise mitigation. Additionally, Mr. Miller suggested checking that all equipment is new, and
36 effective muffler systems were in place. He added that it's not beyond the realm of possibility
37 that a manufacturer could, for a price, reconfigure a piece of equipment to further mitigate
38 sound.

39
40 Chair Hanley referred to the possible Motion Structure Outline included in the Applicant's
41 November 15, 2019 Memorandum. Within that memorandum they not only identify the
42 equipment to be used, they itemize the Best Practicable Means to reduce noise associated with
43 each piece of equipment. Chair Hanley used as an example the replacement of backup alarms
44 with the white-noise atonal system on a 1998 excavator. Mr. Miller noted that if the tonal
45 backup alarms are being replaced with something atonal, and pass the standards required for
46 backup alarms, it would certainly result in a reduction in noise. Attorney Collier wondered how
47 the Board could determine this sort of thing without possessing expertise in noise and
48 equipment.

1
2 It was confirmed the 1998 excavator has link-tracks. Mr. Ashmore suggested the vehicle be
3 given rubber tracks to mitigate noise. Quarry owner Paul MacQuinn suggested instead throwing
4 blasting mats down for the excavator to travel on. Freshwater Stone representative Andy
5 Odeen noted that rubber tracks can be purchased, but It was not clear whether they would be
6 effective for the work or cost effective. It would have to be researched.

7
8 Ms. Anastasia asked if Mr. Miller could identify other noise mitigation efforts outside of those
9 specific to equipment that could be employed. Mr. Miller knew of some things, but they may
10 not be comparable to quarry work. Vibratory piledrivers are an option instead of hammers.
11 Research done by someone knowledgeable in sound on each piece of equipment and comparing
12 it to other equipment in the industry to determine if it's the best available for sound mitigation
13 might yield results. Determining whether there is a better way to do the work the Applicant is
14 doing might also yield results.

15
16 Attorney Collier asked if there were better mitigation techniques such a higher or thicker berm,
17 different materials, or an acoustic barrier.

18
19 Mr. Miller reiterated the portable barrier will be able to mitigate sound. His concern is whether
20 the barrier can be properly positioned to effectively mitigate the sound. A berm built to break
21 the line of sight as previously stated would also be effective. Sound has three places it can be
22 affected – at the source, at the receiving end, and along the path the sound takes. In this case,
23 it is not feasible to control sound at the receiving end.

24
25 Chair Hanley asked whether a berm topped with a barrier, rather than the proposed vegetation
26 might be more effective. Mr. Miller stated that vegetation is visual; there is no acoustic benefit
27 to the small amount of vegetation that can be placed on a berm. A berm with a wall on top
28 instead of vegetation would be more effective.

29
30 Attorney Collier asked if there were other mitigation techniques that have not been discussed.
31 Mr. Miller reiterated that creating a berm as high as it can be created feasibly and adding a
32 barrier on top of the berm would mitigate sound.

33
34 Ms. Anastasia inquired whether the type of materials used in a barrier affects sound mitigation.
35 Mr. Miller noted that once a barrier reaches a certain level of weight per square foot, cracking
36 becomes a concern. Wood barriers weathering over the years could experience cracking.

37
38 In the materials Mr. Miller received he found no information on the distance relationship
39 between the houses and the quarry.

40
41 Ms. Randolph inquired whether the materials Mr. Miller reviewed showed any activities planned
42 that raised concern for Mr. Miller.

43
44 Mr. Miller pointed out that the materials presented state the Applicant will only do a few
45 activities concurrently. A berm or barrier in the right place would provide a reduction of all
46 sound emanating from the quarry. Mr. Miller was unable to determine the feasibility of building
47 a higher berm in the quarry.
48

1 Ms. Anastasia noted the fact that even if the current equipment list is the best equipment
2 currently available, technology will change. She recalled the Board's concern that requiring
3 specific equipment to be used might inadvertently limit use to only that equipment going
4 forward, to the exclusion of potentially better equipment developed in the future. Because of
5 this concern, the possibility of simply setting a decibel limit and instructing the Applicant to do
6 what is necessary to stay under that decibel level was suggested.

7
8 Chair Hanley noted the Applicant has offered a structure of proposed conditions to be used in a
9 Motion. These conditions form the structure of how the Applicant intends to address Section
10 6.2.J Noise. The conditions listed include:

- 11
12 - Placement of the berm
13 - No Blasting or detonation of explosives
14 - Vehicle speeds kept to below 10 miles per hour
15 - White-noise backup alarms for equipment
16 - No drilling, sawing, or extraction from the bedrock during the months of July and August
17 - Limit the noise generated by the equipment by using new or updated equipment or the
18 use of mufflers
19 - Using a portable barrier enclosing three sides of the equipment during drilling. Barrier to
20 be placed between the noise and the nearest home
21 - No simultaneous use of all equipment on site
22 - Use of Best Practicable Means as a minimum requirement in an effort to reduce noise
23 - Continue to research and deploy new equipment, mufflers, and acoustical barriers as
24 found to continue to reduce noise
25

26 Chair Hanley summarized that the Board requested in their Motion the thoughts of Mr. Miller
27 regarding the Applicant's proposal relative to the context of Section 6.2.J Noise, and Mr. Miller's
28 thoughts on the proposal in the November 15, 2019 Memorandum.

29
30 Given the significant amount of work that would have to be done to research the equipment list,
31 Mr. Miller suggested reviewing the bids received by Attorney Collier and hiring one of the Sound
32 experts. Mr. Miller was not inclined to do further research into the matter.
33

34 Chair Hanley felt the Board needs to know the specifics of each piece of equipment listed and
35 what is being done with each piece to attenuate noise.
36

37 Ms. Randolph pointed out that it's been made clear a portable barrier will only be effective in
38 the direction in which it's facing. She wondered about noise traveling across Somes Sound.
39 Currently she has no sense of the impact of the noise.
40

41 Ms. Loftus Keller wondered if an improved berm or walls would direct sound up. What happens
42 to noise once it hits a barrier? Mr. Miller noted some sound is reflected. The higher the noise
43 frequency, the less able the sound is to bend up and over a barrier. If the barrier is effective, it
44 will mitigate noise from all pieces of equipment.
45

46 Ms. Loftus Keller asked about noise that rises above the barrier. Does it dissipate? Mr. Miller
47 responded that sound goes in all directions until it hits something. It then either bounces back,
48 is absorbed, or it diffracts.

1
2 Mr. Ashmore inquired whether the Board has been given the elevations to determine the line of
3 sight. Mr. Miller thought the consultants must have the information.
4

5 Attorney Bearor objected to the consultants being asked if the modeling information was
6 available. The information is in the record. Attorney Collier advised that before asking for the
7 information, the Board must refer to the materials provided for the information. A concise
8 question may be asked should it be found the materials submitted are wanting. Mr. Ashmore
9 agreed with Attorney Collier but pointed out the large amount of information submitted.
10 Specific information on the heights is not readily available. Additionally, the quarry is
11 surrounded by residents and Acadia Mountain.
12

13 Attorney Collier reiterated it was up to the Board to research through the materials. If the
14 information required by the Board is not found after researching the materials, a pointed
15 question may be asked. Attorney Collier reminded the Board that the standard of Noise must
16 be addressed by the overall purpose and the reasonableness of what the Applicant proposes.
17 Best Practicable Means refers to reasonableness. Best Practicable Means must balance
18 reasonable cost to the Applicant with noise mitigation levels that does not unreasonably affect
19 the neighbors. It was Attorney Collier's opinion that a review of specific equipment will result in
20 making judgment calls and engaging in extensive research. Such a task is challenging.
21

22 Chair Hanley reviewed the Standard of Section 6.2.J Noise *"The best practicable means of*
23 *reducing noise shall be employed which may including(sic) the use of sound reduction*
24 *equipment, acoustic enclosures or sheds, limiting on-site speeds to no more than 10 mph, or*
25 *other best industry practices for noise attenuation, to the extent permitted by state and federal*
26 *laws and regulations."* In the November 15, 2019 Memorandum from the Applicant a list of
27 equipment was provided as well as a list of sound reduction equipment associated with each
28 piece. Other elements of sound reduction equipment are included in the list as well, specifically
29 acoustic enclosures or sheds. Restricting vehicle travel to under 10 miles per hour is in Section
30 6.2.J Noise and is one of the Applicant's listed sound reduction efforts. Best Industry Practices
31 are included in the list of sound reduction efforts.
32

33 Attorney Collier noted the issue at hand was how to apply the vague standard provided. One
34 way is to focus on what is practicable or reasonable. The Board needs to determine what can be
35 done and whether the Applicant has done it. Attorney Collier felt the Board needs to know how
36 loud the noise will be in the neighborhood, what type of sound will occur, and whether the
37 sound occurring is reasonable. Further, a determination must be made that everything the
38 Applicant can do to mitigate sound been done.
39

40 Chair Hanley stated that three sound experts have been involved in the issue. Section 6.2.J is a
41 single sentence. The Board can try to dissect every bit of the Applicant's operation, however
42 Chair Hanley felt this was more than should be expected of the Board. This was why
43 consultation was sought.
44

45 The Board is tasked with reviewing the Application, trying to best determine whether what the
46 Applicant is proposing is or is not adhering to the Standards of the Ordinance, and whether
47 there are any conditions the Board feels should be applied.
48

1 Attorney Collier suggested focusing on interpreting the standard. Once interpreted, the
2 standard can be applied.

3
4 It was deemed Mr. Miller's review did not address the requirements as specified in the
5 November 20, 2019 Motion.

6
7 Ms. Randolph asserted the Board's job was to determine whether the Applicant has done
8 enough. The Board continues discussion on what else the Applicant could be doing. Perhaps
9 this is not the task to focus on. The Applicant has stated what they are willing to do. The
10 question at hand is whether this is enough. It is not the Board's job to reinvent technology or
11 instruct the Applicant on other equipment available. Chair Hanley reminded the Board that the
12 Applicant has stated that if new technology becomes available, the Applicant will purchase it as
13 it fits within their financial means.

14
15 Chair Hanley hoped that Mr. Miller's presentation would provide more insight into the
16 Applicant's noise attenuation efforts, such as the berm not being tall enough, therefore the
17 Applicant should install a fence on top of the berm and how tall that fence should be. Mr.
18 MacQuinn's suggestion of driving on blasting mats was another noise attenuation effort that
19 could be employed. These are the kinds of insights Chair Hanley hoped for from tonight's
20 presentation.

21
22 Ms. Anastasia felt that even if it was determined the Applicant was employing the Best
23 Practicable Means in writing, what would it look like? She wondered about a system for
24 monitoring the site. Mr. Ashmore felt that in determining whether the Applicant is doing the
25 best they can, does that not end up focusing on the method in which the Applicant does things?
26 Are the right methods being employed? For example, how far does the excavator travel? Mr.
27 MacQuinn explained the excavator works in a limited area and is used essentially for lifting
28 stone. Laying four blasting mats down would provide ample ground coverage for the
29 excavator's work.

30
31 Mr. Ashmore asked if the excavator was the best way to do the task, or was a crane the better
32 choice? Mr. MacQuinn stated the excavator was the strongest piece of equipment and the
33 safest for the job. Attorney Collier argued that questions like this were addressing the minutiae
34 of the pieces of equipment. Chair Hanley felt it was part of what needed to be addressed.

35
36 Mr. Ashmore clarified that his example was just that – an example. He was not inclined to
37 review each piece of equipment to such a degree. Chair Hanley felt these kinds of discussions
38 might result in setting a condition like that of requiring the excavator to drive on blasting mats.
39 Ms. Anastasia pointed out that the negative aspects of each option would have to be considered
40 before a decision to condition an option could be made.

41
42 Mr. MacQuinn explained blasting mats in more detail: blasting mats are essentially shredded tire
43 woven with cable into thick mats. Blasting mats are heavy and very stable. Using blasting mats
44 for travel has been used by the Applicant in other projects. Mr. Ashmore suggested setting a
45 condition that lag was not allowed to hit ledge without the mats. Mr. MacQuinn noted that
46 traveling to the site will require some travel on the ledge. He was not sure it was possible to
47 guarantee no lag ever hitting ledge. But, when the excavator is in place and working, it can be
48 kept off the ledge. Additional equipment would have to be engaged to move the blasting mats

1 as necessary. There was no other equipment with lags. Mr. MacQuinn explained that the
2 ground in the area required heavy equipment to ensure its stability.

3
4 Chair Hanley restated that it appears the berm as currently planned with vegetation on top will
5 not provide effective noise attenuation. Perhaps the Board should set as a condition that a
6 fence be placed on the berm.

7
8 Attorney Collier worried that any ensuing discussion could result in opening the conversation up
9 to all parties. Chair Hanley disagreed. The Board is tasked with determining the Best Practicable
10 Means of noise mitigation. Determination may require further discussion for clarification's sake.
11 Attorney Collier maintained that if the Board enters into dialogue with the Applicant, then all
12 others will be allowed to comment as well. Attorney Bearor disagreed. The Public Hearing is for
13 public comment. Once the Public Hearing is closed, the Board is allowed to discuss the issue
14 with the Applicant. Trying to better understand the operation is a legitimate reason to talk with
15 the Applicant. Attorney Collier stated it must be brief and limited to specific technical issues. If
16 the conversation is lengthy then others will feel they can and should comment as well.

17
18 Attorney Bearor reiterated the Public Hearing was over.

19
20 Ms. Randolph restated that a sound expert has assessed that the berm as designed will not be
21 effective at noise reduction. Mr. Miller has corroborated that statement. Ms. Randolph felt it
22 was not the Board's responsibility to facilitate making the Application adequate, only to
23 determine whether it's adequate or not. The Application has been presented. The Board's only
24 job is to determine whether what has been presented is adequate.

25
26 Ms. Anastasia felt that discussion and review is necessary to setting conditions on an
27 Application. Mr. Randolph countered that at this point the Board has no way to know what
28 might be missing from sound mitigation efforts. Mr. Ashmore felt the discussion simply
29 underlined the need to hire an expert.

30
31 Ms. Randolph reminded the Board the Applicant is not willing to pay for an expert. Per the
32 Ordinance it is their responsibility to do so, if the Board deems such an expert necessary. Mr.
33 Ashmore did not feel he was qualified to make a determination regarding whether the
34 Applicant's efforts were sufficient or were there other things the Applicant can do. Ms.
35 Randolph wondered if a fence on top of the berm was feasible or effective. Conversely, is
36 addressing such a question designing noise attenuation efforts for the Applicant?

37
38 Ms. Anastasia noted that the question was not how to make the Application better, but whether
39 the Application uses Best Practicable Means.

40
41 Ms. Randolph reiterated that the barrier designed has been deemed by an expert ineffective at
42 noise mitigation. In order to be sure, the Board needs to know where the noise originates from
43 and where it's going. If a third-party sound expert states that Best Practicable Means are not
44 met, there would have to be an understanding of what would constitute Best Practicable
45 Means.

46
47 Chair Hanley felt the Board needs a concise checklist if they intend to go to the level of
48 determination suggested by Ms. Randolph. For example, determining whether or not the three-

sided sound barrier is effective, the Board would have to deliberate, and a Motion with Findings of Fact would have to be made. Such a process would have to be done with each aspect of the sound mitigation efforts presented by the Applicant, plus the many other details; the myriad of noise generating equipment, what specifically will the activity in the quarry look like, the possibility of multiple pieces of equipment running concurrently and the combined sound generated. Ms. Randolph felt there was a whole dynamic of noise on the site that the Board does not have a clear picture of. Spot attempts at controlling noise have been suggested, but there's no telling how effective that would be.

Attorney Bearor reiterated that the Applicant has previously stated they are not willing to fund a study by a third-party expert. In review, the price of the less costly of the two bids received for a study, to be available to the Board by the next meeting, and which can be acted on by the Board at that time, would be amenable to be paid for by the Applicant.

Attorney Collier reviewed the proposal received; 8 hours of review and the completion of a report. Scope, conditions, and exclusions were included in the offer. Attorney Collier hoped the report would assist the Board with making their own piece-by-piece assessment should the Board decide they wanted to make such an assessment.

Chair Hanley clarified for Attorney Collier that the Board's intention is that the expert produce a written report that includes a piece-by-piece assessment of the Applicant's equipment as listed, and provide a determination of the information presented in the Applicant's memorandum dated November 15, 2019. The expert will be required to weigh in on what the Applicant is proposing to do within the context of Section 6.2.J Noise. The expert needs to get more specific with Section 6.2.J relative to the points outlined in the memorandum dated November 15, 2019. The report presented to the Board should provide a point by point review of the November 15, 2019 Memorandum outline and an assessment of whether or not each point conforms to the Ordinance Standard. Each Practicable Step listed to limit noise included in the November 15, 2019 memorandum must be assessed by the expert and an opinion provided to the Board in the report.

The Board concurred with Chair Hanley's direction. Mr. Ashmore hoped to get an opinion on whether or not electricity at the site would allow for quieter equipment to be used. Mr. MacQuinn did not know of any quarry using electric for their equipment. Mr. Odeen noted the diamond electric saw runs off a compressor.

Mr. Ashmore has other items he'd like to hear more about, however those were not related to sound.

Ms. Randolph asked for a summary of what the Board would be asking of the expert.

Chairman Hanley restated the work requested of the expert by the Planning Board: a review to be made of two items, stated below;

Item 1 - For a small quarry of one acre what are the Best Practicable Means of reducing noise using the means described in the Quarrying Licensing Ordinance Section 6.2.J.

Relative to Section 6.2.J, the Board expects comment on sound reduction equipment, acoustic

enclosures or sheds, driving vehicles no more than ten miles per hour, and any other Best Industry Practices.

Item 2 – Given the Application as summarized in the Memorandum from the Applicant to the Board dated November 15, 2019, and the conditions proposed by the Applicant, how well has the Applicant met the standard of Best Practicable Means of reducing noise.

From these two items, the Board expects to see from the consultant an assessment of the November 15, 2019 memorandum and what the Applicant has spelled out in detail and a determination of what items in the November 15, 2019 memorandum are or are not Best Practicable Means.

Attorney Collier shared the response as written in the bid; that Kavanaugh Tocci would review the record, discuss controls and related matters with the quarry owners and others who have been involved in providing sound controls and recommendations. The product will be one letter expressing whether all feasible controls have been implemented or whether other controls might be further considered.

It was reiterated that the information requested was specific relative to the Itemized list in the November 15, 2019 memorandum.

Ms. Randolph wondered if the memorandum would provide enough information regarding the specifics of the site. It was apparent during this conversation that an understanding of the geography and topography of the site is key to making at least some determinations. Additionally, Ms. Randolph was concerned about whether eight hours would be an adequate amount of time to make these determinations.

Chair Hanley felt that in reviewing Section 6.2.J the expert would be looking at the Application in total. It is public record. The Board would expect the consultant to be adequately informed as to the context and scope of the Application.

Attorney Collier referred to the proposal which states “...to review the record, discuss controls and related matters with the quarry owners and others...” It appears the expert will discuss the Application with the Applicants.

Ms. Anastasia felt the Board should be specific on what the record is. Is it just the Application or is it also all the submissions made during the duration of the Application process? Attorney Collier did not feel the Board must be specific. The expert is limited by the stated eight-hour time constraint. They will talk directly with the Applicant if they require specific information. They will look at the November 15, 2019 memorandum regarding the conditions. And they may look further into the record if more information is required such as topography.

Concern was voiced over the length of time necessary for a competent review of the issue. Chair Hanley pointed out that the expert has stated they can accomplish the work stated within the stated time.

It was agreed that Mr. Ashmore’s question on electricity be added into the request as well.

1 Attorney Collier requested clear direction. Chair Hanley felt clear direction was provided in the
2 November 20, 2019 Planning Board Meeting Motion.

3
4 Attorney Collier maintained he wanted clear direction.

5
6 Mr. Ashmore felt the question of electricity should theoretically be answered in the scope of the
7 request as it currently stands. Attorney Collier agreed it might be addressed specifically, but if
8 Mr. Ashmore wanted to be sure of an answer it should be added into the request. Attorney
9 Bearor was not concerned about extra costs associated with adding such a question.

10
11 Attorney Collier explained in detail the specifics of how payment should be made.

12
13 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, INSTRUCTING THE TOWN
14 ATTORNEY IN CONCERT WITH CEO KEENE TO TASK SOUND EXPERTS KAVANAUGH TOCCI TO
15 PROCEED WITH THE TASK OUTLINED IN THEIR LETTER OF JANUARY 24, 2020 TO THE TOWN
16 ATTORNEY, WITH THE ADDITION OF ANSWERING THE FOLLOWING QUESTION: TO DETERMINE IF
17 BRINGING ELECTRICITY TO THE SITE WOULD ALLOW DIFFERENT EQUIPMENT TO BE USED THAT
18 WOULD REDUCE SOUND.

19
20 Ms. Randolph inquired what it was hoped this expert would provide. Ms. Anastasia noted that
21 none of the experts so far have weighed in on whether what is proposed in the Application
22 meets the Standard. Attorney Pileggi disagreed.

23
24 MOTION APPROVED 5-0.

25
26 Attorney Katz requested to speak. Attorney Bearor voiced no objection.

27
28 Attorney Katz noted that a great deal of information on noise was presented at the last meeting
29 and the public hearing was closed. At that point the Board entertained looking into a sound
30 expert. The final decision to do so was made at this meeting. The Board will receive a report
31 from this expert, bringing additional information to the record. At that time will the Board
32 consider re-opening public comment to allow the public to comment on the total record which
33 is then in place before a decision is made? In light of the new information coming into the
34 record being potentially important, Attorney Katz was confident that those he represented
35 would be interested in commenting.

36
37 Mr. Ashmore felt it was a fair issue to consider.

38
39 Attorney Collier counseled the Board to take the question up at the next meeting.

40
41 Attorney Bearor opined there would be no new information coming before the Board.

42
43 Timing for the next meeting was discussed. Chair Hanley felt that Kavanaugh Tocci must first be
44 consulted on the timing of their work and report.

45
46 Attorney Bearor suggested continuing the meeting to the next Regular Meeting. Perhaps the
47 report would be available by then. If the report is not available, the Board can continue to
48 continue the Meeting to future date certain meetings. Chair Hanley asked what the advantage

1 of doing so was.

2
3 Attorney felt a date certain might motivate the experts to get the report in by that time.

4
5 Attorney Foster clarified that this meeting can be continued to a future Regular Meeting, and
6 once the report is received, a Special Meeting date can be determined at that Regular Meeting.

7
8 MS. LOFTUS KELLER MOVED, WITH MS. ANASTASIA SECONDING, TO CONTINUE THE MEETING
9 TO WEDNESDAY, APRIL 15, 2020, 6:00 PM. MOTION APPROVED 5-0.

10
11 **IV. Other**

12 There was no Other Business.

13
14 **V. Adjournment**

15 The Meeting ended 7:58PM.
16
17