

**Town of Mount Desert Planning Board
Meeting Minutes
6:00 PM, December 9, 2020**

This meeting was held virtually and was recorded.

Public Present:

Attorney for the Hughes Barry Mills, Keating Pepper, Steve Hughes, Kate, Hughes, Keith Johnston, Lincoln Millstein, James Whitehead

Board Members Present:

Chair Bill Hanley, Meredith Randolph, Tracy Loftus Keller, Joanne Eaton, David Ashmore

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

Chair Hanley called the meeting to order at 6:01PM. Planning Board Members were noted. Member Christie Anastasia was not in attendance.

Tracy Loftus Keller is an alternate, non-voting member.

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO NAME MS. LOFTUS KELLER A VOTING MEMBER FOR THE MEETING.

VOTE:

JOANNE EATON: AYE

MEREDITH RANDOLPH: AYE

DAVE ASHMORE: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 4-0.

II. Approval of Minutes

November 18, 2020:

MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING, APPROVAL OF THE NOVEMBER 18, 2020 MINUTES AS PRESENTED.

VOTE:

JOANNE EATON: AYE

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

DAVE ASHMORE: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

III. Subdivision Approval Application(s):

5.13 Plan Revisions After Approval

5.13.1 No changes, erasures, modifications, or revisions shall be made in any Final Plat Plan after approval has been given by the Board and its written endorsement has

1 **been recorded on the Plan, unless the Plan is first resubmitted and the Board**
2 **approves any modifications. In the event that the Final Plat Plan is recorded without**
3 **complying with this requirement, the same shall be considered null and void,**
4 **and the Board shall institute proceedings to have the Plat Plan stricken from the**
5 **records of the Town and the Registry of Deeds.**

6 **5.13.2 Applicants for revisions shall submit at least eight (8) copies of any proposed**
7 **revision. If the revision involves the creation of additional lots or units, or extends the**
8 **boundaries of the subdivision, a public hearing shall be required. Otherwise the Board**
9 **shall determine if a public hearing is required.**

10 **5.13.3 The revised Plan shall refer to the original Plan (and any other revisions) and**
11 **state the specific nature of the revision.**

12
13 **A. OWNER(S) NAME(S):** Steven H. & Katherine T. Hughes, Trustees

14 **AGENT(S):** Barry Mills, Hale & Hamlin, LLC

15 **LOCATION:** Pine Ledge Lane, Mount Desert

16 **TAX MAP:** 019 LOT: 040-007 **ZONE(S):** Residential One

17 **PURPOSE:** To determine whether acquired deeded rights of ways over an existing
18 subdivision road of previously approved subdivisions, to access a lot that was not part of
19 the previously approved subdivisions would require an Amendment to the previously
20 approved subdivisions.

21
22 Chair Hanley read Sections 5.13.1, 5.13.2, and 5.13.3.

23
24 CEO Keene clarified that Public Notice was not necessary and abutters were not
25 notified. This discussion was to determine whether the issue requires a Public Hearing,
26 at which time Public Notice will be made and abutters will be notified.

27
28 Chair Hanley stated the Planning Board was tasked with determining whether the issue
29 requires a Public Hearing and whether the issue constitutes an expansion of a
30 subdivision at which time the Planning Board will have to review the Subdivision
31 standards.

32
33 Attorney for the Hughes Barry Mills explained that the Owners would like to sell their
34 property. The question arose as to whether extending the Right of Way (ROW) to serve
35 their property is a change to the original subdivision plan, and if so, does it require
36 Planning Board approval.

37
38 The Hughes are willing to do whatever is required of them. It was thought that
39 extending the ROW was not a change to the subdivision, but only to serve another
40 property. The Owners are not currently part of the Subdivision, and they would be
41 content to remain outside the subdivision.

42
43 CEO Keene stated the lot was created in 1986. The deed to the current owners is dated
44 2005. The subdivision was first created in 1976. There have been several amendments

1 to the subdivision between 1976 and 1991. The lot was not part of the original
2 subdivision and never added to the Subdivision during any of the amendments made.

3
4 Attorney Mills noted the only access to the lot is over the existing Subdivision road. All
5 Subdivision owners have either given permission or consented to the ROW to the lot.

6
7 Owner Steven Hughes noted that they have owned the lot since 2005. Nothing has
8 changed regarding access and use since that time.

9
10 Chair Hanley summarized that the lot abuts a pre-existing subdivision and the only
11 access to the lot is via the subdivision road through the subdivision.

12
13 Mr. Hughes concurred. He was told by the subdivision's developer that the lot was
14 intended to be kept for a family member, however it had been decided to sell.

15
16 Chair Hanley asked about the Applicant's participation in the maintenance costs of the
17 road. Attorney Mills confirmed the easements submitted to the Board show the
18 agreement made by the Applicant to participate in the cost of road maintenance and
19 upkeep. Mr. Hughes confirmed he and his wife have shared in all maintenance
20 expenses since 2005.

21
22 Ms. Randolph asked if all the lots included on the survey were part of the subdivision.
23 Upon review it seemed as if the lots were divided up differently. Perhaps the
24 subdivision is on one side of the road only?

25
26 Attorney Mills clarified that the subdivision plan was on page 6 of the submittals. The
27 compilation of the lots at the end of the submittal is a drawing the Owner's surveyor
28 provided showing the lot's location in relation to the other lots in the area. Page 6 of
29 the submittals shows the 1977 amended version of the subdivision which Attorney Mills
30 believed presents the subdivision as it stands today. He superimposed the Hughes
31 property onto the subdivision survey.

32
33 It was noted the property does not abut the Hall Quarry Road.

34
35 Ms. Randolph noted that the lot was left out of the subdivision by the owner but the
36 only access to the lot is the subdivision road. Is there any other option to access the lot?
37 CEO Keene reported that Hall Quarry Road frontage that was once part of the lot. It was
38 conveyed to another in 1995 rendering the parcel landlocked. Attorney Mills confirmed
39 it had been landlocked until rights of way were obtained from all landowners owning
40 property over which the road passed. Those who share the road but do not own land
41 over which the road passed have given their consent for use. Mr. Hughes confirmed
42 there is no other way to reach the property other than the subdivision road.

43

1 Chair Hanley asked whether any topography or site features prohibited the Hughes from
2 accessing their property using as short a distance on the subdivision road as possible.
3 Attorney Mills noted the entryway being used is the closest access to the property.
4

5 CEO Keene stated the owners access their lot from the Grants Hill Road onto Pine Ledge
6 Lane. This requires the owners to use the entirety of the subdivision road before
7 accessing their lot. Chair Hanley asked whether accessing via the Hall Quarry Road was
8 an option. Mr. Hughes noted the area was essentially a cliff with major boulders in the
9 way. The only way to access the property is from the Grants Hill Road. Attorney Mills
10 reminded the Board that the owners do not own land abutting the Hall Quarry Road.
11

12 CEO Keene referred to an email she sent to Board members and Attorney Mills
13 providing the history of the sale of the lot and the conveyance of the road frontage. No
14 right of way over the Hall Quarry Road area was ever granted. CEO Keene agreed that
15 area of road frontage was quite steep. The lot was once conforming; when the road
16 frontage was conveyed away, it became non-conforming, being smaller than the 2-acre
17 lot size the zoning requires and having no road frontage. The size requirements for the
18 zone were reduced to one-acre, however with no legal road frontage the lot remains
19 non-conforming. The owners have received easements of ROWs from everyone using
20 the road or living in the subdivision. The question before the Board is whether the issue
21 requires a public hearing. Additionally, Section 5.14 of the Subdivision Ordinance would
22 have to be reviewed because the ROW is only 40 feet wide. Today's LUZO requires a 50-
23 foot ROW. The road would have to be upgraded to current standards under the
24 subdivision ordinance unless such requirements are waived by the Planning Board per
25 Section 6.1.1 of the Subdivision Ordinance. This will require the Fire Chief to inspect the
26 current road conditions and determine whether proper access for safety vehicles was
27 possible.
28

29 Ms. Randolph asked whether the lot and the context in which it exists was created by
30 the original owners of the subdivision. CEO Keene affirmed it was. The lot was never
31 made a part of the subdivision.
32

33 Chair Hanley felt the issue fell under Section 5.13.2 of the Subdivision Ordinance. He
34 read the section: *"Applicants for revisions shall submit at least eight (8) copies of any
35 proposed revision. If the revision involves the creation of additional lots or units, or
36 extends the boundaries of the subdivision, a public hearing shall be required. Otherwise,
37 the Board shall determine if a public hearing is required."*
38

39 CEO Keene confirmed that no additional lots were being created. The other condition
40 was if the boundaries of the subdivision were being extended. CEO Keene felt the Board
41 would be extending access with the roadway within an existing subdivision. The
42 question was whether the Board feels this requires a public hearing.
43

1 Chair Hanley felt that given the complexity of the issue it warrants a public hearing; the
2 Fire Chief's opinion was important. He was not sure a review of each item of the
3 Subdivision Ordinance was warranted. CEO Keene concurred. The roadway required
4 review as another lot was being added to the use of the road. The roadway currently
5 serves eight lots.
6

7 Chair Hanley believed the issue was that the owners are intending to sell the lot, and
8 there was the potential for some development on the lot once sold. The Planning Board
9 is tasked with addressing public safety concerns and ensuring a fire engine can access
10 the road to the lot. Mr. Hughes felt that the issue extends to all lots using the road as
11 access. Chair Hanley agreed. Issues such as whether the road is traversable, and
12 whether a fire engine has room to turn around must be considered. For these reasons
13 Chair Hanley felt a public hearing was necessary and an opinion from the Fire Chief.
14

15 Ms. Eaton agreed. A road with multiple homes on it must have ample room for safety
16 vehicles to travel and turn around. Perhaps a full subdivision review is not required, but
17 the road should be reviewed.
18

19 Ms. Randolph disagreed. The issues surrounding the road were established years ago.
20 One lot outside the subdivision was given access to the road at that time. That does not
21 make the lot a part of the subdivision. The subdivision road was built to the subdivision
22 standards in place at that time. Reviewing it now will require the road to be brought up
23 to today's standards. Chair Hanley noted the Planning Board can waive the road
24 standards. He agreed the lot was not a part of the subdivision, and the entire
25 subdivision review process would not be necessary. The Fire Chief needs to look at the
26 road. If he has input on the road standards, then it should be conveyed to the
27 Applicant. Chair Hanley did not feel the subdivision road standards required exhaustive
28 review.
29

30 Ms. Randolph stated that if the road were being reviewed, it would have to be reviewed
31 as part of the subdivision. Chair Hanley suggested asking for a public hearing and
32 attaining the Fire Chief's opinion. Ms. Randolph argued that allowing a ROW on the
33 road does not constitute a change to the subdivision. There appears to be no place
34 within the LUZO referencing this issue.
35

36 Ms. Eaton suggested that the issue falls under Section 5.13.2 which states at the end,
37 *"Otherwise the Board shall determine if a public hearing is required."*
38

39 Ms. Loftus Keller noted it was not a part of the existing subdivision, but it is a remaining
40 piece, and it is affecting the subdivision, therefore the Board is considering the road
41 standards. Chair Hanley reiterated that under the subdivision road standards, the
42 Planning Board can waive any or all the road standard requirements as deemed
43 necessary. In terms of public safety and the potential of future lot development, the
44 Fire Chief should be asked for his opinion.

1
2 CEO Keene pointed out Section 6B.11.2 – Access – of the LUZO must be reviewed along
3 with the Subdivision Ordinance. 6B.11.2 states that *“All lots must maintain safe access*
4 *for fire, police, and emergency vehicles, as determined by the Fire Chief.”*

5
6 Attorney Mills suggested tabling the issue until the next meeting. In the meantime, the
7 Fire Chief could be requested to look at the road and offer an opinion. At that point it
8 could be discussed and perhaps decided at the next meeting whether this extension of
9 the Right of Way is a revision of the subdivision. CEO Keene stated the extension of the
10 ROW of the subdivision is necessary to access the lot. The road’s ROW is being
11 extended. Attorney Mills suggested that once the Fire Chief has provided an opinion
12 the Board would have the information needed to determine whether the issue is a
13 revision of the subdivision. If it is deemed a revision, then a public hearing would be
14 necessary. CEO Keene noted the Fire Chief would simply be looking at the roadway to
15 determine safe access for safety vehicles. He will not provide any opinion on the
16 subdivision.

17
18 Attorney Mills asked whether an extension of the road’s ROW was considered a revision
19 of the subdivision plan. CEO Keene stated the road was a part of the subdivision. The
20 Planning Board needs to review the issue to determine whether it needs a public
21 hearing.

22
23 Ms. Randolph inquired whether the Hughes property connects to the ROW. CEO Keene
24 stated it does via the easements and ROWs the Hughes received in 2005. The ROW is
25 being extended to their lot.

26
27 Chair Hanley felt that based on the plan presented, the ROW is being extended along
28 the short section of gravel driveway to tie back into the ROW established within Pine
29 Ledge Lane. Attorney Mills agreed the section is very short and the ROW for that
30 section has been granted. Chair Hanley felt that technically the ROW for the subdivision
31 road is being extended.

32
33 Mr. Ashmore pointed out the ROW is being extended within the bounds of an existing
34 50-foot-wide ROW. A driveway coming off a subdivision road is not considered an
35 extension of a subdivision road. He did not feel the driveway was an extension of the
36 subdivision road; it is a driveway connecting to the already existing subdivision road
37 within the bounds of the ROW. He noted there is not a full subdivision review every
38 time someone within a subdivision adds a driveway. It is not considered extending the
39 subdivision road.

40
41 Ms. Hughes pointed out a subdivision lot owner beyond the lot they own. The road was
42 not extended for their property; it is already servicing lots in the subdivision beyond
43 their lot. It was estimated that the length of the driveway was approximately 24 feet.
44

Chair Hanley recommended that the issue would require a public hearing, and the Fire Chief's opinion should be sought.

Attorney Mills asked the Board what additional filings or submittals would be required of the applicants. CEO Keene suggested having the Fire Chief submit his opinion, and also a submittal of the road details showing the width of the existing road, as well as determining whether there's any vegetation in the way, or any way to create a pull-off area. If these things can't be achieved or a wider ROW is impossible, then the Planning Board has the option to waive the requirements under Section 6B.1.1 of the Subdivision Ordinance. There are criteria under that Section the Applicant will have to address. CEO Keene noted that if the Fire Chief rejects the road as it currently stands, then the road must be brought up to standards the Fire Chief feels adequate to access the lots.

Ms. Randolph suggested reviewing the issue under Section 6B.11.2 of the LUZO, as opposed to reviewing it under the Subdivision Ordinance. It appears the extension being discussed is a short length of driveway extending from their property to the ROW. She did not believe there was any part of the extension that was not on the ROW and not on their own property. This is not a change to a subdivision. This is a question of access.

Ms. Eaton suggested continuing the discussion to the January 13 Planning Board Meeting, obtain the Fire Chief's opinion before that meeting, The Fire Chief's opinion might make the issue moot. Chair Hanley agreed with Ms. Eaton. Mr. Ashmore requested a site visit be scheduled once the Fire Chief has offered his opinion, to occur before the next meeting. The Board agreed with Mr. Ashmore's suggestion.

It was noted the Applicant will be responsible for reaching out to the Fire Chief.

It was the Board's consensus to revisit the issue on January 13, 2021, including a Site Visit and hearing from the Fire Chief as discussed. No Motion was needed.

CEO Keene suggested Attorney Mills have an engineer look at the subdivision road, and present technical information on the original subdivision road construction if possible.

IV. Section 5 Conditional Use Approvals:

A. Conditional Use Approval Application #020-2020

OWNER(S) NAME(S): G. Keating Pepper

LOCATION: 2 Loon Lane, Mount Desert

TAX MAP: 021 **LOT:** 039-001 **ZONE(S):** Shoreland Residential 2

PURPOSE: Sections 3.4 & 6C.7 Marine Structures – Pier, Ramp & Float

SITE INSPECTION: 3:00PM Masks Required During Site Inspection.

CEO Keene confirmed adequate Public Notice. Abutters were notified.

1 No Conflict of Interest was found among the Board Members.

2
3 Ms. Randolph reported on the Site Visit. The land slopes toward the water before
4 leveling out into a half-circle projecting toward the water. At the edge of the half-circle
5 old logs and stones can be seen. It was clear the logs and stones were the remnants of
6 an old wharf. The area is a historic spot for Somesville. Owner Keating Pepper showed
7 those in attendance where he hoped to build a pier. A pier has been in that location
8 before. Mr. Pepper intends to extend the pier 66 feet; three feet of the pier on land,
9 and 63 feet over the water. This is significantly less than the maximum length allowed.

10
11 Mr. Pepper noted the old wharf was approximately 150 to 200 years old. It is unstable.
12 The logs there are rotten. The rocks are piled high. Mr. Pepper hopes to build a stable
13 pier to safely walk on, along with a ramp and float. The pier is intended to be seasonal
14 for now, however Mr. Pepper may decide to make it permanent at some point. The
15 ramp and float will be seasonal. A preliminary application has been made to the DEP
16 that so far as been favorably viewed. A formal application to the DEP has not been
17 made yet. Applications have been made to the Bureau of Submerged Lands and to the
18 Army Corps of Engineers. Both have seemed favorable and made no significant revision
19 requests. The proposed pier will again be given public notice and abutters will be
20 notified, in accordance with the DEP application process. The Maine Historic
21 Preservation Commission has been notified, as well as the six Maine Native American
22 tribes, as required by the Army Corps of Engineers.

23
24 Chair Hanley requested public comment. There was none. Chair Hanley closed the
25 public comment period.

26
27 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO FIND THE APPLICATION
28 COMPLETE.

29 VOTE:

30 JOANNE EATON: AYE

31 MEREDITH RANDOLPH: AYE

32 DAVE ASHMORE: AYE

33 TRACY LOFTUS KELLER: AYE

34 CHAIR BILL HANLEY: AYE

35 MOTION APPROVED 5-0.

36
37 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, TO USE THE SHORT FORM

38 VOTE:

39 MEREDITH RANDOLPH: AYE

40 JOANNE EATON: AYE

41 TRACY LOFTUS KELLER: AYE

42 DAVE ASHMORE: AYE

43 CHAIR BILL HANLEY: AYE

44 MOTION APPROVED 5-0.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO APPROVE THE APPLICATION.

A review of the Checklist was made and is attached to these Minutes.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

JOANNE EATON: AYE

DAVE ASHMORE: AYE

CHAIR BILL HANLEY: AYE

MOTION TO APPROVE THE APPLICATION APPROVED 5-0.

V. Other

James Whitehead would like to have an informal discussion about a proposed project proposal in Seal Harbor, as permitted under Section 5.4 (below).

5.4 Review Procedures

Pre-Application Procedures – Prior to submitting a Conditional Use Approval Application an applicant or authorized agent may request to appear at a regular meeting of the Planning Board to discuss the proposed project. The pre-application review shall not be construed as representing either the pendency or the commencement of the application process per se.

Chair Hanley informed the Board that James Whitehead had requested to appear before Planning Board to discuss a potential project.

It was found Mr. Whitehead was not in attendance. Attempts to reach him were unsuccessful. No discussion was held.

VI. Adjournment

MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, ADJOURNMENT.

VOTE:

MEREDITH RANDOLPH: AYE

DAVE ASHMORE: AYE

JOANNE EATON: AYE

TRACY LOFTUS KELLER: AYE

CHAIR BILL HANLEY: AYE

MOTION APPROVED 5-0.

The meeting adjourned at 7:34PM.