

**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING MINUTES**

**DATE: January 12, 2022
Town Hall Meeting Room,
21 Sea Street, Northeast Harbor and via Zoom**

Board Members Present: Chair William Hanley, Tracy Loftus Keller, Meredith Randolph, David Ashmore, Christie Anastasia

Public Present: Attorney for the Applicant Ed Bearor, Rachel Thompson, Janet Ellis, Attorney for Hans Utsch and Julia Merck Matt Manahan, Chip Haskell, Agent Stephen Salsbury, Mark Bergeron, Attorney for Abutters Daniel Pileggi, Andy Odeen, David Sweet, Attorney for the Planning Board James W.J. Collier, Jeff Gammelin, Howard Colter, Carey Kish, Christian, Fran Leyman, Seth Singleton, Lincoln Millstein, Gerald Shencavitz, Zorina, Betsy Roberts, Jan Coates, Attorney for Hall Quarry Residents Roger Katz, Pamela Bowie, Kelly O'Neil, Judy Ayles, Dick Broom, Joanna Krasinski, Janet Leston Clifford, Donna Reis, Maureen McGuire

This meeting was a hybrid of in-person attendance and on-line attendance via Zoom and was recorded.

I. Call to Order 6:00PM

Continued from October 20, 2021

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

**II. Quarrying Licensing Application:
Public Hearing**

A. Quarrying License Permit: #001-2014

OWNER(S): Harold MacQuinn, Inc.

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

AGENT(S): Stephen 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 One (R1)

PURPOSE: Review Quarry License Application

Attorney Ed Bearor presented the Applicant's submission of more detailed drawings of the proposed road. The proposed road meets the road standards in the Subdivision Ordinance. The Applicant is not requesting a waiver. In December consent was given by the landowner granting the Right of Way (ROW) to construct the road. Revisions to the proposed road have been made since that time. None of the revisions proposed are on the landowner's land. The landowner is not currently available for

1 comment on the revisions.

2 Attorney Bearor has for submission an email exchange with the landowner's attorney,
3 available for review.

4 The email exchange asserts the landowner's verbal approval.

5
6 Attorney Manahan objected; the deadline for submissions has passed. He requested
7 the Board not accept the submission.

8
9 Chair Hanley affirmed the submission cannot be accepted. Attorney Bearor requested
10 the email be added to the record.

11
12 Attorney Manahan objected to adding more evidence to the record after submission
13 deadline.

14
15 Agent for the Applicant Stephen Salsbury shared the revised road plans. The plan
16 includes the subdivision standards. The ROW is 50 feet. The plan includes a cul de
17 sac. Culverts under the cul de sac address drainage. Culverts replace "rock sandwich"
18 construction previously planned for under the road. A profile view of the road is
19 included in the submission. Mr. Salsbury confirmed the proposed road surface height
20 will two feet higher than it currently is.

21
22 Attorney Manahan objected; the plans were submitted after the deadline.

23
24 Attorney Collier believed the submittal was merely correcting a technical deficiency.

25
26 Mr. Salsbury explained that the original plan proposed a layer of rock, termed a rock
27 sandwich, under the road, allowing water to travel under the road surface. This was
28 deemed a good choice because the ground is flat and there are no clearly defined
29 channels showing water travel. The shift to culverts was made in response to
30 comments from Attorney Manahan. Culverts were added at various low points in
31 place of the rock to allow for the flow of water.

32
33 Attorney Manahan believed the change to be substantive and objected to the
34 submittal. Additionally, stormwater specialist Mark Bergeron was present and
35 prepared a letter for the Board. If the Board prefers not to accept the letter
36 submission, Mr. Bergeron is ready to speak to the fact that the road does not meet
37 the standards of the ordinance. Attorneys Pileggi and Katz shared Attorney
38 Manahan's objections. They did not believe what is proposed meets the standards.

39
40 Stormwater specialist for the Applicant Chip Haskell explained that water draining
41 toward the road is not originating from the quarry. Water from the quarry will be
42 pumped to the level spreader location. These culverts will direct water from sources
43 near the road away from the level spreader location. There are wetlands on either
44 side of the culvert, and this is where the water naturally flows. By picking the road up

1 and adding culverts the water can continue in the direction it is always gone.

2
3 Mark Bergeron of PRC Environmental presented his concerns regarding the
4 environmental changes made.

5 There is a natural low spot where water collects on the landowner's property. Raising
6 the road by two feet adds depth to the area where water collects. The rock sandwich
7 was removed from the area. Without culverts or the rock sandwich layering in that
8 area there will be no way for water to cross under the road. Culvert designs for the
9 cul de sac must meet specific design standards per the Quarrying Licensing Ordinance
10 (QLO) Section 6.2C2. Those standards are not included in the plans, and it is unclear
11 if they have been met. There has been no detail shown explaining the quarry water
12 removal operation.

13
14 Attorney Manahan added that the Applicant's easement is insufficient. Consent from
15 the landowner to build the new road design has not been granted. The road must be
16 maintained to Town standards and the easement provided does not give the
17 Applicant that right. The easement requires the landowner's consent before any
18 construction or maintenance can be done on the road, and consent can be withheld.
19 The Applicant does not have administrative standing to proceed. He requested the
20 Board reject the Application on that basis.

21
22 Attorney Pileggi noted that earlier in the Application process stormwater review was
23 extensive. Modeling was provided and an analysis was made of water flow and
24 destination. Such information is not presented with this iteration. The effort to meet
25 road standards changes everything significantly. A road is being raised two feet and
26 puts in place materials that can erode. There has been no objective modeling or
27 quantitative analysis regarding sedimentation flow. There are sensitive wetlands
28 nearby. The Applicant has not met the burden of proof regarding the issue.
29 Additionally, the Applicant will not be allowed to make necessary improvements if the
30 landowner does not give approval. The easement does not allow for right, title, and
31 interest and does not meet the standard. Attorney Pileggi urged the Board to hold
32 the Applicant to the burden of proof.

33
34 Attorney Katz concurred with Attorneys Manahan and Pileggi. The easement is clearly
35 insufficient. It was his opinion that Attorney Bearor likely tried to get the easement
36 changed and was unable to do so. This is cause for concern. Right, title, and interest
37 allow for use of the road and the ability to maintain and repair the road. The Applicant
38 does not have that, and there is no way to move beyond that lack.

39
40 Attorney Bearor referenced a letter submitted January 5, 2022, about a case in which
41 the applicant had claim only by adverse possession and it was found to be sufficient.
42 In this case, consent for construction of the road has been given. The Planning Board
43 cannot hypothesize on what may happen to the road in the future. The Applicant has
44 done everything asked of them. Revisions were made in response to criticism and

1 are not substantive. Response to Mr. Bergeron's concerns is included in Mr. Haskell's
2 letter in the January 5, 2022, submission.

3
4 Attorneys Manahan and Katz were not a part of the hearing process at the time the
5 subject of stormwater runoff and erosion was originally discussed.

6
7 Mr. Haskell reiterated that drainage patterns are not changed by raising the road, and
8 impervious surface will not increase. Nothing proposed will change what was
9 previously approved in the Application process. Culverts will be placed at low points
10 along the road to keep water moving. This work is separate from stormwater analysis
11 done in the quarry.

12
13 Chair Hanley opened the discussion up for public comment.

14
15 Resident Carey Kish pointed out the many chances the Applicant has been given. He
16 believed it long past time for more chances.

17
18 There were no further comments.

19
20 Mr. Bergeron reiterated that the original model and stormwater design created by
21 the Applicant did not include a cul de sac. This could affect stormwater; therefore,
22 the models should be updated. A road built higher could result in water flooding the
23 road or ponding on someone's property. It does not meet the Town standard.

24
25 Attorney Bearor argued the cul de sac and road surface are already on site. Water
26 flow is not being altered. Mr. Haskell agreed. With the road raised, culverts
27 underneath will allow for flow to continue.

28
29 Chair Hanley listed three issues relative to the road:

- 30 - Road standard compliance issues
- 31 - Stormwater compliance issues
- 32 - The question of title, right and interest

33 Title, right and interest must be determined in order to proceed to the other issues.

34
35 Mr. Ashmore felt the ROW provided was not sufficient.

36
37 Chair Hanley closed the public comment.

38
39 Attorney Collier stated the MMA requires a document or deed to give the grantee a
40 legally cognizable expectation of power to use the property in the ways authorized by
41 the permit if approved. Rights provided in the easement are unclear.

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43 Attorney Bearor argued the changes proposed are not on the landowner's property
44 and do not affect the easement.

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Ms. Randolph pointed out that the requirement is to both build and maintain the road to the required standard. The easement states the Applicant does not have the right to maintain the road. There is no ambiguity.
The ROW does not allow the Applicant to do what is required by the code.

Mr. Ashmore reported that easement law states an easement grantee cannot do what is not included in the easement document. More cannot be inferred. It is clear the Applicant does not have the right to maintain the road without permission from the landowner. Further, the Board requested the Applicant obtain that right. The Applicant left the October 2021 meeting with the intention of obtaining the right, and they failed to obtain it.

Attorney Bearor asserted that Planning Board Chair Hanley spoke with the landowner's attorney or the landowner directly regarding what was necessary to be included in the easement. Chair Hanley recalled taking a call from the landowner's office. He did not speak to the landowner's attorney or the landowner. The call was to request clarification on the easement issue. Chair Hanley told the caller the Board required the easement issues be clarified regarding the road and whether it can meet the standards and be maintained by the Applicant. Chair Hanley added that with his years of experience on the Planning Board and his involvement with the Quarry hearing, he is well aware of what is and is not appropriate in answering questions from the community. Throughout this process Chair Hanley has been approached by a number of people with questions and comments.

Attorney Bearor asked to be shown where the requirement for obtaining the right for ongoing maintenance for the road is stated. The language is in Section 6.2A2, General Requirements of the QLO: *"The owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites."*

Chair Hanley believed the Planning Board has tried to make this a human process, despite the challenging issue at hand. All those in attendance have invested years of hard work, and the Planning Board has tried to accommodate all in a fair and thoughtful manner. But the process must be facilitated to an end point. The Board concurred there is an issue with the title, right and interest over the easement granted the Applicant. Chair Hanley recalled that the Planning Board requested the Applicant clarify this issue and it has not been clarified.

Ms. Randolph added that another reason for road standards is to protect the property around it. If a culvert became plugged and flooding occurred, lack of road maintenance could create a detrimental impact to other people's property. The standard is not just for protecting the Applicant's interests; they must protect the Town's interests, and the property around the road.

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2 Ms. Anastasia agreed. She wondered what happens if the road is built and then not
3 maintained to standards. Is it closed? Is it allowed to deteriorate? If the road were
4 allowed to deteriorate, it could negatively impact others who must use the road.

5
6 Per the easement language, the Town cannot enforce road maintenance without the
7 landowner's approval.

8
9 Attorney Bearor argued that Maine law asserts that the right to travel over a ROW
10 includes the right to maintain the ROW. Even though the easement says the
11 landowner's consent is required, by law the Applicant will have the right to maintain
12 the ROW.

13
14 Attorney Collier pointed out the right to maintain the road is specifically contradicted
15 by language in the easement. The easement states permission must be granted for
16 any maintenance, on a road over which heavy trucks are expected to travel. Attorney
17 Bearor argued the road already handles quarry traffic.

18
19 Sections of the various ordinances affected by the question of the road include Section
20 6.2C – Stormwater Management, Section 6.2G – Road and Driveway Design, the Land
21 Use Zoning Ordinance (LUZO), which when it was discovered the road was serving
22 more than two lots activated the Subdivision Ordinance, Section 6.1C – referencing
23 Title, Right and Interest, Section 6.2A2 – referencing maintenance requirements.

24
25 Chair Hanley read the Motion from the October 20, 2021, Minutes:

26 *"MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDDING, TO AMEND*
27 *THE PREVIOUS MOTION TO INCLUDE THE FINDINGS OF FACT THAT*
28 *SECTION 6B.11 APPLIES, BASED UPON THE UNDERSTANDING OF*
29 *QUARRYING LICENSING ORDINANCE SECTION 2.8, "CONFLICTS WITH*
30 *OTHER ORDINANCES" WHICH STATES THAT "IT IS ANTICIPATED THAT THE*
31 *APPLICATION WILL BE REVIEWED CONCURRENTLY WITH THIS ORDINANCE*
32 *AND THE REQUIREMENTS OF THE LAND USE ZONING ORDINANCE. WHERE*
33 *THIS ORDINANCE IMPOSES A GREATER RESTRICTION UPON THE USE OF*
34 *THE LAND, BUILDINGS OR STRUCTURES, THAN ANY OTHER RULE,*
35 *REGULATION, BYLAW, PERMIT OR PROVISION OF LAW, THE PROVISIONS*
36 *OF THIS ORDINANCE SHALL PREVAIL."*

37
38 Work ensued to draft an appropriate Motion.

39
40 Ms. Randolph wondered if reference to the Subdivision Ordinance should be included
41 in the Motion. She would prefer a Motion based only on QLO standards requiring the
42 Applicant to maintain all infrastructure. The Decision will go to court where discussion
43 could linger on the Subdivision Ordinance. The argument can stay fully within the
44 QLO, and the easement does not allow what the QLO requires. Discussion ensued

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regarding the crafting of two Motions.

MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, THE LAND USE ZONING ORDINANCE HAS BEEN FOUND BY THE MOUNT DESERT PLANNING BOARD TO APPLY TO THIS APPLICATION (SEE BOARD MOTION OF OCTOBER 20, 2021, REGARDING SAME). SPECIFICALLY, SECTION 6.B11.2 REQUIRES THAT ALL PRIVATE ROADS THAT SERVE TWO OR MORE LOTS MUST MEET STREET DESIGN AND CONSTRUCTION STANDARDS OF SECTION 5.14 OF THE SUBDIVISION ORDINANCE.

THE QUARRYING LICENSING ORDINANCE SECTION 6.2A2 REQUIRES THAT THE OWNER AND OPERATOR ENSURE THE MAINTENANCE OF ALL INFRASTRUCTURES, STRUCTURES, AND THEIR SITES. THE EASEMENT (BOOK 7146, PAGE 329) PROVIDED BY THE APPLICANT SPECIFIES THAT CHANGES IN CONSTRUCTION OR MAINTENANCE MUST BE APPROVED BY THE FEE LANDOWNER. AS IT IS IMPRACTICAL TO OBTAIN THE FEE LANDOWNER'S APPROVAL TO REPAIR AND MAINTAIN THE ROAD FROM TIME TO TIME ONGOING, THE APPLICANT HAS NOT SHOWN SUFFICIENT EVIDENCE OF TITLE, RIGHT, AND INTEREST AS IS REQUIRED BY QUARRYING LICENSING ORDINANCE ARTICLE 6, SECTION 6.1C.

VOTE:

- TRACY LOFTUS KELLER: AYE
- CHRISTIE ANASTASIA: AYE
- MEREDITH RANDOLPH: AYE
- DAVID ASHMORE: AYE
- CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, THE APPLICANT HAS A DUTY TO ENSURE THE MAINTENANCE OF ALL INFRASTRUCTURES, STRUCTURES, AND THEIR SITES PER SECTION 6.2A2 OF THE QUARRYING LICENSING ORDINANCE BUT THE APPLICANT CANNOT FULFILL THAT DUTY BECAUSE OF THE LIMITATIONS OF THE AFOREMENTIONED EASEMENT.

VOTE:

- CHRISTIE ANASTASIA: AYE
- MEREDITH RANDOLPH: AYE
- DAVID ASHMORE: AYE
- TRACY LOFTUS KELLER: AYE
- CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

Attorney Collier advised that the Board may choose to make other Motions on other portions of the Application at this time. If the Board has additional reasons to deny,

1 they should be included, as well as all Findings of Fact and Conclusions of Law. This
2 way, when the case is taken to court, the Court will have a complete record and all
3 Motions to review. Attorney Collier advised the Board to review the Checklist to
4 ensure it is complete and then create an overall Motion. It was noted the section on
5 Performance Guarantees was not necessary at this point.

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8 Attorney Manahan pointed out that the original Action regarding Stormwater
9 standards states the Applicant met the standards. However, new information seems
10 to show differently. Attorney Manahan believed there should be further discussion
11 regarding stormwater standards. Attorney Collier disagreed. That would mean
12 revisiting the Application.

13 Attorney Manahan argued that if the Planning Board does not revisit the issue of
14 Stormwater, the previous approval stands. Attorney Manahan believed the
15 Performance Guarantees inadequate as well. The Ordinance requires a letter of credit
16 be issued. What was submitted does not include a letter of credit.

17
18 Attorney Bearor explained that the letter of credit is issued upon approval of the
19 Application.

20
21 Attorney Collier reiterated that if there were additional reasons for denying the
22 Application, they should be included in in the Planning Board's final Decision.
23 Attorney Bearor contended the court could take issue with an application in which
24 the Board stopped short their consideration of all the review criteria.

25
26 Attorney Manahan did not believe the Application to be approved except for Title,
27 Right, and Interest. He contended Stormwater has not been approved, nor has
28 Performance Guarantees. Attorney Collier opined that a Motion to deny indicates
29 nothing has been approved. Attorney Bearor disagreed. Each Motion on the
30 Application is a vote. Significant time was spent on each one. None of the Motions
31 were considered preliminary. Attorney Manahan maintained that in the past thirty
32 days, significant changes have been made. Those changes show Stormwater
33 standards have not been met. A full discussion of the stormwater standards is
34 necessary to review the issue in light of the changes presented.

35
36 Ms. Randolph felt it difficult to address the Application as if for an existing activity
37 when the activity proposed in the Application is new activity to the site, despite the
38 quarry being deemed by the court pre-existing. The Purpose in the QLO includes the
39 charge to preserve the Town's natural resources, property values and their ability to
40 remain assets to the Town and its residents. The QLO checklist does not allow for
41 addressing those purposes, particularly with regard to the issue of sound. No level of
42 protection has been offered to the residents or the Town. The standard of Noise was
43 approved due to the way the QLO was written. The Purpose of the QLO recognizes
44 the need for protecting the Town, its residents, property values, and natural

1 resources, and Ms. Randolph hoped that there was legal standing for the Board to
2 determine that it is the Town's responsibility to protect these assets. At the end of
3 the process, Ms. Randolph could not in good conscious approve the Application, not
4 knowing how much noise the Board is allowing to be imposed on the residents. The
5 QLO did not provide the Board grounds on which to adequately address these issues.

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9 Attorney Collier referred to the Courts decision on the question of grandfathering:
10 *"On remand, the question from the Planning Board is whether ever Section 6.1 of the*
11 *QLO as discussed herein and without reference to the nonconforming use and*
12 *grandfathering provisions of the LUZO MacQuinn is eligible for a Quarrying license for*
13 *any active, unlicensed quarry activity."* The Courts have directed the Planning Board
14 to look at the operation as if it were existing quarrying activity. The Planning Board is
15 bound to do so.

16 Mr. Ashmore agreed with Ms. Randolph. However, the Planning Board is compelled
17 to abide by the Court as Attorney Collier stated. This does not mean there are no
18 other items to discuss. He is in favor of reviewing the checklist.

19
20 Attorney Bearor did not see how the Planning Board could alter the checklist. There
21 are findings made, evidence presented, votes taken. The Purpose stated in the QLO
22 is not a standard. It can be used to interpret the standards, but it is not a standard in
23 and of itself. Concessions have been made by the Applicant regarding noise.
24 Protection for the residents has been proposed. The Applicant's primary argument
25 was that the Section of Noise is Void for Vagueness. Nothing has changed. There is
26 no new evidence.

27
28 Attorney Collier clarified he is not suggesting reviewing each standard. He suggests
29 considering whether building the road will change stormwater runoff for the site, or
30 whether the Performance Guarantees should be reviewed. These were the two
31 potential issues he believed worth review.

32
33 Attorney Manahan was not advocating the entire checklist be reviewed. With respect
34 to Ms. Randolph's statements, Section 6.1J requires estimated levels of noise at the
35 property line. The Applicant never provided that. Attorneys Bearor and Collier
36 disagreed.

37
38 The Board considered their next steps.

39
40 Mr. Ashmore contended that Attorney Collier advised the Board years ago that any
41 section that has been ruled on can be reviewed. Mr. Ashmore would like to review
42 the section on Noise. He would not be averse to a review of the entire Checklist to
43 ensure the Board is still comfortable with what was found.

1 Ms. Anastasia noted the Application has a sum total greater than any one piece. The
2 Board never took a broad view of the Application. If doing so makes for a stronger
3 case the Board should do that. If the Motion is to be denied on the Motions just made,
4 that is also a path. Whatever path the Board chooses, it will be appealed. What kind
5 of paper record can the Board make for the Appeal? What is the best service to the
6 Town, and how can the Planning Board best protect the interests of the Town? It was
7 Ms. Anastasia's belief that a review of the overall issue should be made in addition to
8 the individual pieces of the Application standards.

9
10 Attorney Bearor argued that there is no provision in the QLO for looking at the sum
11 total of the situation.

12
13 CEO Keene noted that several Motions made in the checklist were made and voted
14 on by Planning Board members no longer on the Board.

15
16 Ms. Randolph asked what would happen if discussion on the sum total of the issue
17 occurs and the Board finds that despite the Motions made, the Quarry is not a good
18 choice for the Town. Chair Hanley felt this may only confuse the issue.

19
20 In looking at the checklist for sections that were incomplete, Chair Hanley felt some
21 sections required review. Section 2.4 Applicability, Section 2.6 Types of Quarrying
22 Activity Prohibited; a Section addressing Blasting was not completed, though the
23 subject was discussed. At the end of the Checklist there is a section on Performance
24 Guarantees. Performance Guarantees were discussed but there is nothing in the
25 Checklist. General housekeeping is necessary to tighten the Checklist up, and if a final
26 Motion is made these will help create any list of permit conditions.

27
28 Attorney Collier agreed with Attorney Bearor that Performance guarantees are only
29 required if the project is approved. Permit conditions are created only if the
30 Application is approved.

31
32 Attorney Pileggi recommended the Board make a finding regarding whether the
33 revised road construction still meets its burden related to stormwater and erosion
34 control so other parties will know how to proceed. This was likely the argument the
35 Applicant would make. Attorney Collier agreed that was an issue on which the
36 Planning Board could act.

37
38 Mr. Ashmore reiterated Ms. Anastasia's question. Is there a point in time where the
39 Board votes on the sum total of the Application and all points considered?

40
41 Attorney Collier advised that voting on the issue in a holistic manner is not done. In
42 looking at the big picture of the Application to make a motion, specifics must be
43 referenced. Otherwise, the only action left is a Motion to deny.

1 The Planning Board agreed more time was necessary to further discuss process and
2 make findings if applicable. This likely means another meeting. Discussion ensued
3 regarding scheduling.

4
5 Attorney Collier's recommendation was to deny the Application.

6
7 Chair Hanley believed that more due diligence, after years of review, can be done to
8 close the issue more properly, if other Board Members are in agreement.

9
10
11 Ms. Randolph recalled the last time the Application was denied by the Planning Board
12 their decision was overturned in the courts. The decision the Board made then was a
13 solid one. That makes it difficult to end the process without being sure the Decision
14 is as strongly reinforced as it can be.

15
16 Ms. Anastasia agreed. There are some loose ends. Looking at stormwater she
17 understood that the standard was voted on and some voting members are no longer
18 on the Board. But new information has been submitted, making the analysis
19 incomplete. The same is true regarding erosion. Perhaps an addendum could be
20 made addressing stormwater management in relation to the road. Additionally, there
21 are areas on the checklist that are empty and areas that do not include information
22 submitted later in the process. The Board needs to complete their analysis, in
23 particular to new information received.

24
25 Mr. Ashmore agreed with Ms. Anastasia.

26
27 Chair Hanley felt there must be a clear reason for continuing discussion. Additional
28 discussion should be quick, yet thorough.

29
30 Attorney Collier reiterated his warning that if the Board starts discussion on
31 stormwater, other parties will want to make additional submittals, and rebuttals to
32 those submittals will be required.

33
34 Attorney Bearor doubted Board members could analyze all the stormwater
35 information in the record unless it is before them. The issue of stormwater was
36 discussed years ago, plus the information heard at this meeting.

37
38 Ms. Anastasia believed the stormwater issue is superseded by the road issue.
39 Discussion could ensue with the goal of better closure. The Application should be
40 reviewed to ensure all portions are fleshed out.

41
42 Attorney Collier stated there is no requirement to address other portions of the
43 Application if the Application is going to be denied. Review is necessary only for those
44 items the Board intends to deny the Application on.

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Ms. Anastasia believed Attorney Collier was suggesting the checklist is filled out until a box cannot be checked, at which point the project is denied. That is not defined in the QLO. She wondered where this was stated.

Ms. Anastasia was not sure there were other reasons to deny at this point. Attorney Collier reiterated that if there were other reasons they should be added to the list. All reasons should be included so the Court has the opportunity to review them all.

Discussion ensued regarding the next meeting date. It was agreed to meet at the next regular meeting, February 9, 2022.

Attorney Bearor noted that if Stormwater was to be discussed, then the record must be available. He did not believe Planning Board members were knowledgeable in stormwater details presented earlier in the process and able to incorporate the latest information into the earlier information.

It all must be reviewed. Attorney Collier agreed.

Attorney Collier stated that if the Board wants to vote to deny the Application because there's not enough evidence submitted regarding stormwater based on the road proposed to be built, then the Board must be familiar with the stormwater plan for the entire lot. Attorney Pileggi pointed out that the Board has the record. All new members have affirmed they have read that record. He doesn't disagree with Attorney Bearor; however, the stormwater plan is in the record. Attorney Bearor argued that it has been years since the stormwater plan was discussed. He questioned whether any Board Member can clearly remember what was submitted years ago.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO CONTINUE THE MEETING TO FEBRUARY 9, 2022, 6:00PM.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

CHRISTIE ANASTASIA: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 5-0.

III. Adjournment

The Meeting ended at 9:03PM.