

**Town of Mount Desert Planning Board  
Planning Board Meeting Minutes  
Meeting Room, Town Hall  
6:00 pm, May 11, 2017**

**Public Present**

Robert Clifford, Maureen McGuire, Peter Aylen, Judy Aylen, Carey Kish, Nat Fenton, Francoise Leyman, Ellen Brawley, Janet Ellis, Janet Leston Clifford, Earl Brechlin, George Gilpin, Pam Bowie, W. Keith Bowie, Jan Coates, Kelly O'Neill, Paul MacQuinn, Attorney for the Planning Board James W.J. Collier, Elizabeth Roberts, H. Scott Stevens, Attorney for the Aylens and the Shencavitz' Daniel Pileggi, Keaton Stevens, Brooke Stevens, Laurie Shencavitz, Gerry Shencavitz, Charlotte Singleton, Seth Singleton, Stephen Salsbury, Attorney for the Applicant Ed Bearor, Katie Foster, Emily Beck, Geoffrey Young, Jeff Gammelmin, Andy Odeen, Antonio Blasi, Carol Korty, Bill Buchala, John MacDuffie, Marianne Buchala, Sharon Musetti

**Board Members Present**

Chairman Bill Hanley, David Ashmore, Meredith Randolph, Dennis Kiley, Lili Andrews

Also present were CEO Kimberly Keene and Recording Secretary Heidi Smallidge

**I. Call to Order**

Chairman Hanley called the meeting to order at 6:05 pm.

**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 2

**PURPOSE:** To hear evidence, including public comment, on the issue of whether the use is "grandfathered" (i.e., a lawfully pre-existing nonconforming use).

Ms. Andrews confirmed adequate public notice. Abutters were notified. No conflict of interest was found.

Attorney Collier provided a history of the process so far.

Attorney Ed Bearor opined that the question of grandfathering should not be revisited. The review is only a few requirements away from being fully heard. It's been over two years since the Applicant submitted materials addressing the question of Grandfathering. He hoped at the least the Chairman would limit discussion to new information not previously submitted, and relevant to the question. Chairman Hanley agreed the submittals must be relevant to the issue of

1 Grandfathering.

2  
3 Attorney Pileggi reminded the Board that a large amount of compelling materials has been  
4 submitted to show there is no lawful non-conforming use, due to lack of quarry operations. He  
5 hoped those materials would be addressed when making the decision.

6  
7 Hall Quarry resident Carey Kish requested the Planning Board reconsider their decision on  
8 Grandfathering made at their September 16, 2014 meeting. He felt the decision was made  
9 prematurely and without careful review of the evidence. Additionally, Mr. Kish felt a review of the  
10 Minutes show the Board members had doubt about the decision. Mr. Kish read from transcripts  
11 of past Planning Board meetings that stated any decision could be reconsidered. He requested  
12 the Planning Board consider nullifying the Grandfathering decision. Mr. Kish submitted his  
13 comments for the record.

14  
15 Attorney Bearor requested copies of any submittals. It was agreed to ensure he received those.

16  
17 Hall Quarry resident Fran Lehman stated that regarding the LUZO, the moratorium ordinance,  
18 and the quarry ordinance, they were created to safeguard the residents of the Town. Ms.  
19 Lehman said homes have been selling at 20 – 40% below assessed value in Hall Quarry.  
20 Attorney Collier stated the point was not specific to grandfathering and therefore irrelevant.

21  
22 Ms. Lehman noted that the moratorium ordinance was created because extraction had not been  
23 anticipated and, per the ordinance, not adequately provided for in the Town's LUZO. Ms. Lehman  
24 felt this supported the assertion that the quarry has not been active. Ms. Lehman submitted her  
25 comments for the record.

26  
27 Hall Quarry resident and abutter Peter Aylen stated there were gaps of operation within the  
28 record of quarry operation longer than those allowed by the quarry ordinance. Mr. Aylen  
29 submitted his comments for the record.

30  
31 Hall Quarry resident and abutter Judy Aylen provided a review of how the decision of  
32 grandfathering was made. She pointed out two of the five Planning Board members abstained  
33 from the vote due to their doubts. No vote was ever taken on what the definition being used was.  
34 Ms. Aylen read from meeting transcripts, offering examples of what she felt was the Board's  
35 confusion over the definition of quarrying. Ms. Aylen felt the vote was hasty considering the  
36 confusion at the meeting. She requested the Board reconsider. Ms. Aylen submitted her  
37 comments for the record.

38  
39 Hall Quarry resident Janet Leston Clifford provided several statements from past Minutes  
40 regarding continued use of the quarry, and the definition of Mineral Extraction including both  
41 extraction of stone from the bedrock and carrying away of stone. Ms. Leston Clifford presented  
42 the Applicant's chart showing the records of the quarry operation. Ms. Leston Clifford found the  
43 following:

- 44 - There is no mention of the word "extracted" in the chart during the time spanning 1974 –  
45 2001.
- 46 - Extractions are noted on July 23, 2001, August 20, 2001, September 17, 2002, January

1 13, 2003, April 21, 2003, March 22, 2004, and May 4, 2004.

- 2 - There is a gap of 22 months with no note of extractions being made.
- 3 - Followed by 2 dates mentioning extraction.
- 4 - Followed by a gap of 27 months with no note of extractions being made.
- 5 - There are three more extractions noted.
- 6 - Then a gap of 17 months with no note of extractions being made.
- 7 - Freshwater Stone started using the quarry.

8  
9 Ms. Leston Clifford noted that landowner testimony alleging the lack of extraction concurs with the  
10 chronological information she's found.

11  
12 Hall Quarry resident Bob Clifford mentioned the "pink stone" noted by the applicant as having  
13 come from Hall Quarry. Mr. Clifford read meeting transcripts of Applicant Paul MacQuinn  
14 explaining that different colors of pink stone could come from quarries other than Hall Quarry. Mr.  
15 Clifford surmised that simply because a receipt made note of "pink stone", it did not mean it  
16 necessarily came from Hall Quarry. He felt that any "pink stone" slips in the record could not  
17 necessarily be confirmed as being from Hall Quarry.

18  
19 Hall Quarry resident and abutter Gerald Shencavitz voiced his support of what others have  
20 already presented. He reminded the Board he submitted materials earlier in the application  
21 process. He pointed out a letter from 2009 that had been submitted by the Applicant to the Town  
22 announcing they would be quarrying, and it would be a quieter, cleaner operation. Mr.  
23 Shencavitz felt the fact that they felt obliged to submit such a letter supported the fact that the  
24 quarry had not be in recent operation.

25  
26 Mr. Shencavitz referred to the quarry ledger presented to the Town and noted that over a ten-  
27 year period the top-line gross revenue was \$13,000.00. He felt this supported the fact that the  
28 quarry was not a large part of any company's revenue generation.

29  
30 Mr. Shencavitz presented a chart showing the quarry activity. There was very little activity some  
31 years; as little as a single mooring stone in some instances. He pointed out some of the evidence  
32 was nothing more than memories of a purchase.

33  
34 Mr. Shencavitz alleged the ledger the Applicant submitted shows retroactive updates.

35  
36 Mr. Shencavitz noted that quarrymen were present at a meeting, however they were never asked  
37 when they worked at the quarry or when they stopped.

38  
39 Regarding the point of economic recession brought up in a previous meeting, Mr. Shencavitz  
40 noted that during the housing booms of years past, there was no activity in the quarry. This  
41 shows the quarry's activity is not tied to economics.

42  
43 Mr. Shencavitz referred to pictures presented earlier to show that the quarry is not active.

44  
45 Mr. Shencavitz felt the Planning Board was overwhelmed with the information presented by the  
46 applicant. He said that the focus of the review and materials provided should be on the 10 – 15

1 years in question, and none of the additional information provided.  
2

3 Hall Quarry resident Maureen McGuire stated that the quarry ordinance states that 100 cubic  
4 yards of material must be removed within a 12- or 18-month period to be considered active.  
5 There should be at least one piece of supporting paperwork for every 12- or 18-month period.  
6 The documentation provided does not show specifically what work was done and does not  
7 particularly prove the applicant was in the quarry. She felt the burden of proof was on the  
8 Applicant. Ms. McGuire presented her comments for the public record.  
9

10 Hall Quarry resident Pam Bowie felt the vote granting Grandfathering status to the Applicant was  
11 premature. She stated that per the meeting recording, the Planning Board's attorney scripted the  
12 motion without Board direction. Ms. Bowie presented meeting transcripts she felt supported her  
13 feeling that Board Members were not confident in their position on the issue. Ms. Bowie pointed  
14 out that two Board Members abstained from the vote.  
15

16 Ms. Randolph stated that she abstained because she was not sure of her position on the  
17 question. Since that time, she's attended Board training, and with that training realized she  
18 should have voted against in that circumstance.  
19

20 Hall Quarry resident Kelly O'Neill introduced a database system called the Mine Data Retrieval  
21 Program. The program is an information database for miner safety showing hours worked. Ms.  
22 O'Neill thought it was created by OSHA. Ms. O'Neill made a review of the information in the  
23 database on the Hall Quarry site and the Mosquito Mountain site, another site belonging to the  
24 Applicant. The Hall Quarry site shows no hours of use, as reported to the database, in the quarry  
25 from 2003 to 2010. There are uses reported at the Mosquito Mountain quarry.  
26

27 Attorney Collier asked if the Applicant is required to report hours to the program. Mr. Gammelin  
28 noted that if full-fledged quarrying were begun, they would report it to the appropriate government  
29 agency. The government agency would want to inspect the equipment to ensure safety. They  
30 would not be required to report if they were just taking a few stones.  
31

32 Ms. Randolph noted the database information shows 841 hours recorded in 2016 in Hall Quarry.  
33 Mr. Gammelin noted the hours reported likely came from timecards. The hours are total man  
34 hours that include mileage and time in the quarry for each man involved. He estimated it was  
35 more like 300 hours, approximately.  
36

37 Mr. Kiley noted there's only one hour cited in 2017. Mr. Gammelin noted it was a bookkeeper's  
38 hour.  
39

40 Ms. O'Neill submitted aerial photos of both Mosquito Mountain and Hall Quarry. She stated that  
41 while perimeter changes to Mosquito Mountain are evident, there are no such changes to Hall  
42 Quarry. Additionally, plants have grown in. Ms. O'Neill felt these pictures supported the fact that  
43 there is no real activity in the quarry. Attorney Bearor asked if the pictures consider depth  
44 changes to the quarry. Ms. O'Neill felt a GIS specialist could tell.  
45

46 Attorney Collier wondered if the Board should set a standard with regard to electronic submittals.

1 The Board felt it was not appropriate to do so at this point in the discussions. Ms. Randolph felt  
2 that if such parameters were going to be set, they should have been set prior to the meeting and  
3 not mid-discussion. Chairman Hanley noted hard copies were presented by Ms. O'Neill, in  
4 addition to the digital information submitted.

5  
6 A short recess was called.

7  
8 Hall Quarry resident Ellen Brawley requested the vote on Grandfathering be reconsidered, given  
9 that it was made without input from the residents.

10  
11 Hall Quarry resident Carey Kish restated that the residents felt it necessary to review the  
12 statements to ascertain how the decision on Grandfathering was reached. He felt confusion and  
13 doubt was evident in the previous meetings' recordings. He hoped the decision on  
14 Grandfathering could be reconsidered.

15  
16 Hall Quarry resident Seth Singleton stated the Planning Board's job is to protect and enhance  
17 public and private property values, and permit an increase in residences and recreational facilities  
18 and commercial enterprises which avoid public disadvantages. He felt the quarry does not follow  
19 these directives.

20  
21 Hall Quarry resident and abutter Jan Coates noted that many of her comments echoed those  
22 already made. She submitted her letter to the Board for the public record.

23  
24 Chairman Hanley asked for further public comment. There was no further public comment.

25  
26 Attorney Bearor requested the opportunity to respond to the comments made. They would first  
27 require the time to review the comments. Chairman Hanley agreed the Board also would like to  
28 review and discuss the new information presented. Attorney Collier wondered if the Applicant's  
29 response could be written out and submitted beforehand, thus limiting the meeting time to  
30 discussion of the highlights. Attorney Bearor agreed.

31  
32 Janet Leston Clifford stated that although Attorney Bearor stated Attorney Pileggi had a chance to  
33 respond to comments earlier, no other residents had the chance to respond to comments made,  
34 and Attorney Pileggi does not represent all Hall Quarry residents. She felt other Hall Quarry  
35 residents were not given the same opportunity to comment.

36  
37 A submittal deadline and future meeting dates were discussed.

38  
39 Mr. Clifford inquired whether the residents would have an opportunity to rebut or comment on any  
40 comments the attorneys make regarding tonight's submittals. He wondered why the attorneys  
41 appear to be getting the final word. Chairman Hanley felt the public would be allowed to make  
42 comment. Ms. Leston Clifford noted Applicant submittals would be added to the public record  
43 and residents could view those. Chairman Hanley felt that at some point there must be a  
44 demarcation point where no new information will be submitted.

45  
46 Ms. Leston Clifford felt the definition of quarrying is in the ordinance. She stated it was outside

1 the Planning Board's purview to discuss what their definition was. Mr. Kiley noted the definition  
2 was not in place at the time of the Grandfathering discussions.  
3

4 Ms. Leston Clifford asked when the public would have time to review the submittals and submit  
5 their own rebuttals.  
6

7 Attorney Collier stated Attorney Bearor's submittal would only be a rebuttal to what has been  
8 submitted and not new information. There should be no reason to submit a rebuttal to his  
9 rebuttal. May 31<sup>st</sup> at the end of the business day was decided as the deadline for Attorney  
10 Bearor's rebuttal submission, and June 6<sup>th</sup> was decided as the date for the deadline for any other  
11 submittals. June 13<sup>th</sup> at 6:00 PM was the date of the next meeting.  
12

13 **VI. Adjournment**

14  
15 MR. KILEY MOVED, WITH MS. RANDOLPH SECONDING, TO CONTINUE THE MEETING  
16 TO JUNE 13, 2017 AT 6:00 PM. MOTION APPROVED 5-0.  
17

18 Meeting was adjourned at 8:49 pm.  
19