Town of Mount Desert Planning Board
Special Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, October 18, 2016

Public Present

Charles F. Wallace Jr., Attorney for the Shencavitz' and Aylen's Daniel Pileggi, Janet Leston Clifford, Anne S. Funderburk, Rick Mooers, Sharon Musetti, Marianne Buchala, William Buchala, Earl Brechlin – Mount Desert Islander, George Gilpin, Cathy Willey, Jim Willey, Laurie Shencavitz, Gerald Shencavitz, Attorney for the Applicant Ed Bearor, Andy Odeen, Linda M. Reynolds, Steve Smith, Pam Bowie, Jeff Gammelin, Stephen Salsbury, Paul MacQuinn, Judith E. Aylen, Attorney for the Planning Board James E.J. Collier, Peter Aylen, Francoise Leyman, Eric Reuter, Carey Kish, Jan Coates, Elizabeth Halpern, Christopher Rawls, William K. Bowie, Thomas Boatright, Kelly O'Neil, Charlotte Singleton, Elizabeth Roberts, John Kelly, Maureen McQuire, H. Scott Stevens, Robert E. Wallace, Steve Krasinski, Joanna Krasinski, Ellen Brawley

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 6:03 PM. Voting members were noted.

II. Quarrying License Application:
Public Hearing:

A. Quarrying License Permit #001-2014
OWENER(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: Quarrying License Application

Adequate Public Notice was confirmed by Meredith Randolph. It was confirmed that Abutters were notified. There was no conflict of interest found.

It was agreed that the goal was to complete discussion of the Section regarding Noise at the meeting, and possibly begin addressing the Section regarding buffering. It was the consensus that all other sections of the application have been addressed and voted on. Chairman Hanley confirmed it was the Board's intent to give the public intent with regard to the issue of grandfathering. If necessary an additional meeting would be scheduled to ensure it.

Anne Funderburk felt the question of grandfathering should be addressed first. Ms. Funderburk opined that if the quarry was active at the time the area was re-zoned then the Town was in error

in zoning it residential. And if the quarry was not active at the time of the re-zoning, and re-started operations, then it was not a legal quarry.

Fran Lehman inquired whether an independent surveyor had determined the current footprint of the area was indeed an acre or less. A footprint of an acre or more would require involvement by the DEP. Stephen Salsbury of Herrick and Salsbury stated his company had done the measurements, based on what constituted active quarry area.

Kelly O'Neill pointed out discrepancies in the various plans and drawings she'd viewed.

Mr. Salsbury reviewed the newest submittals. They included:

- Species planted on the berm on page 17.
- References to blasting were removed on various pages, with pages 26 – 34 being removed completely and replaced with blank pages.
- A June 5, 2015 letter from noise consultant Eric Reuter has been included on page 130.
- An addendum with regard to wetlands submitted by Lee Berman has been added on page 132.
- A USF&W letter has been added on page 139.
- An email from June 2015 from the DEP was included on page 146 regarding the one-acre threshold for the quarry permit.
- Pages 147 to 149 addresses the agreement made with regard to the locations of the monitoring wells to be installed.
- Page 150 is MDOT information regarding the materials planned to be contained in the berm and side slopes.
- Page 152 is an October 4, 2016 letter.
- SP3 has been included.
- A-1, A-2, and A-3 are aerial photos.

It was noted the blue lines on aerial photo A-1 are the quarry lines. The other lines on the photo were drawn by the DEP and were not part of the application.

Mr. Kiley pointed out the quarry perimeter on the aerial photograph is labeled as 1.1 acres. Mr. Salsbury clarified the area in the photo includes stockpile areas and roads which would not count toward the size of the quarry per the ordinance.

Ms. O'Neill pointed out the discrepancies she mentioned previously. She pointed out a 2015 Natural Resources map and the excavated area. Overlaying maps show access roads where there weren't any previously. She also had a map showing the perimeter to be 0.87 acres. She felt an independent survey might be prudent. Other maps she's looked at also show discrepancies in the quarry and the wetlands in the area as well.

Mr. Salsbury stated quarry area no longer being quarried does not count as quarry area. Roads also do not count towards quarry area.

Attorney Collier stated that if there is serious doubt, the Board can get an independent contractor to look at the issue at the applicant's expense. Mr. Collier cautioned the Board that prior to taking

that measure, a careful review of the issue and any alleged discrepancies be made.

Chairman Hanley felt the issue would be addressed during discussions of the buffering section.

Mr. Salsbury noted that plan SP1 shows the one-acre boundary. Chairman Hanley asked if the calculations were available that determine the quarry area. Mr. Salsbury noted the calculations were not included, however the DEP has confirmed the area is under an acre. He showed the area in question to the Board and confirmed that no quarrying has occurred outside the boundary.

Attorney Pileggi had no additional comments.

Janet Clifford inquired whether the materials presented were made available to the public prior to the meeting. CEO Keene stated a packet of additional materials was received in the Town Office on October 4. The public may review all materials received, and may, at their expense, have copies made. However it is the public's responsibility to inquire at the Town Office for additional materials received.

Ms. O'Neil mentioned an email dated June 26, 2012 between Mark Stebbins and CEO Keene. In that email Mr. Stebbins provided a photo dated 1967. The email notes the DEP will not require a permit for the quarry.

Attorney Bearor addressed 6.2J, Noise. He noted the ordinance stated "*The best practicable means of reducing noise shall be employed, which may including (sic) the use of sound reduction equipment, acoustic enclosures and sheds limiting on-site speeds to no more than ten miles per hour or other best industry practices for noise attenuation to the extent permitted by State and Federal laws and regulations.*" Attorney Bearor stressed there is no noise decibel limit to meet. Best practicable means are required for noise reduction. The applicant has hired a noise consultant, Eric Reuter. That consultant provided recommendations for noise reduction. The applicant has adopted every recommendation made. Additionally, Attorney Bearor noted there is no definition of "best practicable means".

The applicant has agreed to:

- Replace the exhaust system on a large loader onsite.
- Replace the large loader to an extent by replacing it with a smaller device for much of the work.
- Replace the compressor with a quieter one.
- Replace the backup alarms on the vehicles.
- Analyze a barrier system and determine it was effective in noise attenuation.
- Measure each piece of equipment at the site and catalogue the equipment to be used and sound level emissions for each piece of equipment per the directive of the Planning Board.

Mr. Reuter's October 4, 2016 letter addressed these levels and showed the noise each piece of equipment would emit at a distance of 50 feet. Measurements have been taken, and noise levels were found to be below the DEP standards.

Drills are one of the noisiest pieces of equipment and cannot be replaced. A barrier to block the

noise was deemed necessary for equipment such as drills. With regard to noise attenuation, Mr. Reuter listed a hanging vinyl blanket and fences as two ideas for blocking noise. Mr. Reuter noted the noise blocking option must be easily movable to follow the drill. It was his opinion that hay bales were an effective self-supporting, movable sound barrier.

Noise testing with the barrier was done from various sites, such as Mosquito Mountain and property line locations and found effective.

Mr. Reuter discussed noise frequencies. Barriers lose their effectiveness as the sound frequency goes down. Sound can bend around a barrier and low frequency noise wavelengths bend more easily. It would be difficult to find any barrier effective against low frequency, unless the barrier was five or more feet taller than the noise source. As long as noise blocked by the barrier doesn't exceed noise refracting over the top of the barrier, noise attenuation will be successful. It will be difficult to get a noise attenuation system that's practical for the operation's low frequency. The hay bales have been shown to work and meet the criteria of the ordinance.

Jeff Gammelin added that he's purchased a wire saw in an effort to reduce the drilling time, therefore reducing the noise-making time.

Mr. Reuter noted that the term "practicable" is open to interpretation. This is a small operation and needs to be easily mobile to maintain noise control. The building of sheds, as mentioned in the ordinance, would not be practicable.

Mr. Reuter reported that, per his previous letter included in the application, berms would not be used for noise control. Mr. Reuter stated noise measurements were taken at distances of five to 25 feet from the equipment. The only piece of equipment measured at five feet was the dust collector. All other sources of noise were measured at distances of 15 to 25 feet. All measurements were standard practice. Mr. Reuter agreed modeling was necessary when projects needed to comply with DEP regulations but not for this small operation. The applicant has been directed by the Planning Board to review each piece of equipment and reduce its sound emissions. Total levels are therefore an unnecessary burden to the applicant. It is faulty logic to assume that combining the noise sources together would invalidate the noise attenuation measures. The applicant has taken measures to reduce the sound levels of each piece of equipment. Mr. Reuter noted that the Planning Board did not direct the applicant to measure cumulative operation.

Ms. Randolph felt that noise levels could not be measured on some of the equipment without other equipment running concurrently. Mr. Reuter pointed out that equipment was separated by approximately 50 feet. He agreed some of the measurements might contain the excess noise of other equipment running at the time of measurement. Additionally it was pointed out that noise sources are pointed in different directions on varying equipment.

Mr. Shencavitz stated Mr. Gammelin's statement was false. He asserted he hears multiple pieces equipment running concurrently.

Mr. Reuter said that when two sources of noise are separated by ten or more decibels, the lower

level noise source does not contribute to the overall noise level.

Ms. Randolph suggested limiting pieces of equipment operating as an option for limiting noise. Mr. Reuter agreed reducing the number of concurrently running equipment would reduce the noise. It would depend on the difference of locations of equipment and the relative noise emission levels.

Noise expert Charles Wallace mentioned an updated report from Resource Systems Engineering provided to the Board earlier that day. This updated report was in response to Mr. Reuter's report dated October 5. Attorney Pileggi noted the ordinance requires the applicant to use the best practicable means of noise attenuation, however there's been no modeling or industry standards assessing the noise impact. No information regarding cumulative noise has been provided. The testing methods are unclear because the report does not provide firm guidelines. The distances at which noise was measured were not industry standards. There is no indication in Mr. Reuter's report or in the application of specific best management practices or industry standards.

Attorney Pileggi maintained that applicable State and federal standards referenced in Section 6.2J apply to a quantifiable standard. He felt it was reasonable to look at those standards. Additionally, it did not seem that any of the noise attenuation efforts address low frequency noise, yet nearly all the noise impact from the equipment is low frequency noise. On page 19 of the new application Attorney Pileggi pointed out the applicant was running all their equipment at the time of Mr. Wallace's testing and the noise was at 39 decibels at the property line. If that level of noise can be maintained and is agreed to and is not surpassed by the applicant then the residents may be willing to agree to it. In August 2014 several pieces of equipment were being used concurrently, contradicting Mr. Gammelin's assertions that only a few pieces of equipment at a time are used. Per Mr. Reuter's data, the sound of a single piece of equipment is consistently above levels noted on page 19 of the application and above the levels tested by Mr. Wallace in August 2014.

Attorney Pileggi stated the applicant has presented no evidence of best practicable means within the industry of noise attenuation. Furthermore, they've only presented one type of noise attenuation which doesn't meet the standards in the ordinance.

Charlie Wallace of Resource Systems Engineering provided a lengthy presentation to the Board. He stated that best practicable industry standards can be defined. Mr. Wallace disagreed with Mr. Reuter's statement that standards for a large project would be different than standards for a small project; the same equipment is being used in both places, therefore noise attenuation measures would apply to both. The goal is to control the relative impact through reasonable and practicable means, which will in turn control cumulative noise levels. Mr. Wallace felt efforts to control relative impact were not included in the applicant's work.

The applicant should have provided a range of noise attenuation options, along with professional opinions about which options would be best for the situation.

Steel clack tracks on mobile equipment against stone are a quarry noise that has not been discussed. The practicable solution of rubber additions to the tracks should be considered.

Mr. Wallace opined the process should be to look at the current situation without the quarry noise, estimate where the situation will go and how the noise created will impact the overall environment.

Mr. Wallace felt lead-loaded vinyl curtains will handle the low-frequency sound better than hay bales. Mr. Wallace stated they are effective against high-frequency noise. As a mobile attenuation effort they are more difficult to move than a vinyl blanket. Noise data measured from Mosquito Mountain is not available for the performance of the hay bales under various field conditions. There is not enough data regarding hay bales to determine them a best practicable measure.

When taking different measurements at different distances, data on the distances and measurements are necessary to do the normalizing calculations. None of this information was included in the application and therefore can't be verified by an independent party. Mr. Wallace pointed out the high amount of low-frequency noises in the table of normalization. He felt low-frequency noise had not been effectively dealt with in the report.

A compressor can be purchased with an acoustical package, however no mention of such an option is made in Mr. Reuter's report.

It was Mr. Wallace's hope that a full discussion of all the noise attenuation efforts on each piece of equipment could be had to determine their impact. The applicant has provided ideas without a full range of possibilities for comparison.

When talking about best practicable efforts of noise attenuation, it's important to have the human perception of noise and its effect. Mr. Wallace gave several examples of examples of decibel level changes.

During tests, it was noted neither the neighbors nor the applicant realized measurements were being taken. It was alleged to be a routine work day for the applicant. That routine day had an average equivalent sound level of 39 decibels. DEP standards would find this noise level acceptable. It was confirmed noise levels would rise if the equipment was closer to the residents. Mr. Wallace reiterated that summations are provided in Mr. Reuter's report without any data backing them up. Mr. Wallace provided noise measurement equations to allow the Board to check the data provided. In summary, this was all standard industry practice and no measurement protocol was provided by Mr. Reuter.

Mr. Wallace felt the Board had not been provided the information necessary to make a decision. The vinyl blankets mentioned are used by many in the industry. The board does not have information on best practices for each piece of equipment. New equipment with noise attenuation packages has not been discussed.

Mr. Wallace reiterated that almost all the equipment listed is low frequency.

Additionally equipment measuring protocol is undefined. Measurements were not reported in an

industry standard way.

With regard to measuring distances, 50 feet is a good rule of thumb for collecting data. Other distances may result in skewed data.

Equipment noise was measured in test-mode, which is usually quieter than operating-mode. Operating-mode tends to have more pieces of equipment operating simultaneously. Mr. Wallace reiterated that noise levels were tested on a routine work day and 39 decibels were reached.

Mr. Wallace felt the report Mr. Reuter provided was not based on best practicable measures because it doesn't provide the full range of what could be done, and there's also no cost analysis to recognize a small quarry as opposed to a larger operation. A full range of options has not been made available.

With regard to backup alarms, Mr. Wallace suggested that a new technology – strobes - is allowable and involves no sound.

Mr. Wallace repeated that no modeling was included in Mr. Reuter's report.

With regard to wavelength there are no equivalent-specific distance measurements presented in Mr. Reuter's report.

Chairman Hanley called a short recess.

Ms. Randolph asked whether ambient noise made any difference to noise levels. Mr. Wallace stated the change in sound level was not affected by the starting noise level points from the human perception. The increase of 10 decibels will be perceived as a large increment, regardless of where the noise level is when that increase is heard. Mr. Reuter measured ambient noise levels and received a 49 decibel point ambient sound reading. Mr. Reuter mentioned the noise level he received was due to a wood chipper off site. Mr. Wallace asserted that the normal ambient reading is 39 decibels, and the quarry noise raises the level to approximately 61 or 62 decibel points over an average of 39. This figure comes from Mr. Wallace's sound assessments taken from three residential locations using the overall arithmetic average equivalent sound. These measurements were taken while the quarry was operating. Mr. Wallace reported the map showed where he was during these measurements being taken - on site, below the houses. Mr. Reuter pointed out where he was located during testing. Mr. Reuter noted there is a comparison shown and noted in the annotations.

Ms. Andrews asked if it was Mr. Wallace's opinion that lead-lined vinyl curtains or other materials recommended earlier would have helped lower the noise levels. Mr. Wallace affirmed those and other materials would indeed lower the noise levels. He described the vinyl curtains and opined they would be easier to move than hay bales.

Mr. MacQuinn stated he was willing to try vinyl curtains if they will reduce noise. Mr. Wallace stated the curtain could be considered an industry standard, depending on the circumstances of noise levels. Industry standards dictate the most cost effective remedy that meets the goal. Mr.

Kiley asked Mr. Wallace to confirm that one of his main points was that there is a host of sound-mitigating options – the lead-lined vinyl curtains being but one example - and that the Planning Board should have those at their disposal for consideration. Mr. Wallace confirmed this was his opinion.

Scott Stevens felt that in addition to sound levels, duration of sound was also a factor. Mr. Wallace agreed that the issue of sound duration is an issue not addressed by the applicant.

Chris Rawls mentioned the issue of the blasting and demolition and shockwaves should also be considered for sound mitigation efforts. Mr. Wallace felt the issue had not been addressed by the applicant.

Peter Aylen asked what the ambient noise level was. Mr. Wallace explained it was the all-encompassing sound without the noise of the quarry. Mr. Wallace noted the ambient sound he measured was 33 decibels. Mr. Aylen asked what the noise measurement was when the quarry was in operation. Mr. Wallace was told it was in operation when he received the noise levels he previously noted. Mr. Aylen asserted the quarry was not in operation the days Mr. Wallace measured. This left a difference of 6 decibels. Mr. Wallace clarified that ambient and background are measured differently.

Mr. Shencavitz asked if, as the operation digs deeper into the earth, it wouldn't create a megaphone effect and bounce the noise off the rock walls. Mr. Wallace affirmed the noise would be affected as the operation went deeper. The change in noise can be modeled.

Ms. Aylen asked if there was any way to have the Planning Board get a sense of the noise levels. Mr. Wallace suggested having the Board in Hall Quarry as the quarry was in operation.

Pam Bowie asked if other variables like wind carrying sound would affect the noise levels. Mr. Wallace agreed variables like wind can carry sound.

Linda Reynolds inquired if quarry employees had to wear ear protection. Mr. Wallace felt it was likely that some of the employees do have to wear ear protection.

Attorney Bearor repeated Mr. MacQuinn's assurance that the applicant has agreed to use the vinyl-lined curtains Mr. Wallace referred to. The applicant would be happy to use whatever name brand Mr. Wallace suggested.

Mr. Reuter reiterated he measured noise at the property line in 2014. From the map in the report he pointed out where his measurements were taken. The distances from the equipment were approximately two to three times the distance of Mr. Wallace's positions of measurement. Mr. Reuter surmised the difference in noise level could be as much as ten decibels. It was Mr. Reuter's estimate that it was disingenuous to suggest these were an "apples to apples" comparison. It was his goal to match the noise attenuation to the size of the operation. The benefit of straw over vinyl would be that the straw is more absorptive and doesn't reflect as much sound. A quarter inch of filter over a hard surface does not absorb as much. The various degrees of noise control can be expensive, particularly some of the noise attenuation efforts Mr.

Wallace has described. Mr. Reuter felt these were expensive solutions for an operation that is not run year round.

Janet Clifford inquired how long the quarry operation will run. Mr. MacQuinn stated the area is quarried starting in the spring, through the summer, into September. It will depend on the need, and the weather. Mr. MacQuinn didn't believe Freshwater Stone had been in the quarry on a daily basis at any time during the year.

Mr. Shencavitz stated that in 2012, the quarry started operation in early March and quarried through the summer until after Thanksgiving. Mr. Shencavitz submitted a diary of operation to support his allegation. Mr. MacQuinn noted that the roads are posted in the spring, prohibiting the trucks necessary to the operation.

Jeff Gammelin of Freshwater Stone noted that time cards available can refute Mr. Shencavitz' allegations. He noted Freshwater Stone has access to more than one quarry. Work is dependent on need and market. His operation would not work a single quarry from March to December. Focusing on one quarry would neglect other quarries. Mr. Gammelin was reluctant to set up a schedule, as the time spent in the quarry was based on the need as it arises. However, he did not feel his company would not be in there more than three or four months of the year. Additionally, Mr. Gammelin stated quarry work is not the exact same task every day.

Mr. Gammelin reiterated that the noise level tests were done without his knowledge, and he has records showing Freshwater Stone was quarrying there the days of the testing. He felt it was unfair to accuse his operation of ceasing quarry operations till after the test was made.

Attorney Collier asked if the application mentioned a length of time during the year the quarry would be used. Mr. Salsbury noted there is no time limit set. Operational limits were based on pulling 2500 cubic yards of rock per year. There were also some constraints based on what time of day drilling could occur. Attorney Collier suggested that limiting activity to a set number of days per year might be helpful. Mr. Gammelin did not feel he could do that. Operation was based on need. Mr. Gammelin stated he was willing to work with the residents to alleviate their concerns and distress to the best of his ability.

Chris Rawls mentioned two companies providing noise attenuation, one of which is essentially a tent covering the entire operation allowing for both noise and dust attenuation.

Attorney Pileggi warned that using the vinyl curtain was not the solution. Attorney Pileggi wanted to emphasize that the point is that the application is short on providing best practicable means for noise attenuation. He felt the application is devoid of the information necessary to approve it.

Ms. Clifford noted that best industry practices should be easily found and used as a reference. Best industry practices must be definable. The applicant should provide the list and their argument for why their choices are in fact the best industry practices for the quarry and the equipment being used.

Attorney Bearor noted the noise section of the ordinance is a quality standard not strictly defined.

Maine law states that if a standard isn't quantifiable, then it can't be regulated. The applicant has stated he would accept Mr. Wallace's suggestion of vinyl curtains; he did not feel the applicant should be criticized for this.

Ms. Andrews noted the Board members are not experts. The Board is asking for a presentation of what is available. Merely accepting the first suggestion made is not wise. There are more ways to attenuate sound and they should be reviewed. Attorney Bearor agreed, however the unfortunate wording of the ordinance leaves the issue open. How many types of noise attenuation should be presented by the applicant before best practicable methods can be determined?

Ms. Randolph felt the best method of noise attenuation for the machines being used must be stated somewhere. Attorney Bearor felt the reference should be in the ordinance. Ms. Randolph felt the ordinance refers to "industry standards". Attorney Bearor disagreed.

Mr. Reuter did not know of any industry standard body that lists noise control measures.

Chairman Hanley suggested there is a qualitative ordinance and quantitative data. Ultimately, it's still qualitative, regardless of how much data is provided. Perhaps the Board needs to be on site when the equipment is running to have the qualitative perception of the quarry noise, while simultaneously measuring the noise, to translate qualitative into quantitative. The point of contention is the human perception of the noise being created.

Mr. MacQuinn reminded the Board there is a stop-work order.

Ms. Randolph suggested a decibel level could be set as a condition of approval.

Attorney Collier cautioned against setting a decibel level. And there should not be quarrying while there's a stop-work order. The standard is subjective and setting a limit is problematic. Best industry standards are only an example of the best practicable means. Mr. Wallace noted that the Board should be given a range of alternatives best suited for a quarry of this size by the Applicant. Both Mr. MacQuinn and Mr. Gammelin should be well-versed in the question of noise attenuation, given their jobs. Through discussion between the applicant and those opposed, it should be possible to come to a consensus of the noise attenuation measures that will work best. Attorney Collier cautioned against tying the decision to decibel.

Mr. Kiley felt it would be within the Board's capacity to hear the sounds in question. This may not require the quarry being used, or visiting the quarry. He suggested the two sound experts come together to agree on a couple different options, provide a layout of the costs of the options, and an assessment of how much sound would be mitigated. Providing the Board with examples of different decibel levels would allow them to make a decision on what level of sound is acceptable.

Attorney Collier disagreed. A clarification could be asked for, but he cautioned against asking for new information. Or the Board can ask to hear from an expert.

Mr. Kiley noted that he believed that a limited scope of information about sound attenuation was

provided. By asking the two experts to work together it may provide a range of possibilities the Board can consider. Mr. Kiley hoped to be better informed before making a decision. Ms. Randolph agreed with Mr. Kiley, asking why the Board shouldn't ask the experts to come together. Attorney Pileggi noted his clients had previously offered to make Mr. Wallace available. They asked to be invited to participate in Mr. Reuter's measurements and received no reply. Before a joint effort happens, Attorney Pileggi felt his clients would want to know what exactly was being proposed, and the cost and how the information gained would be used.

Mr. Kiley felt both experts could review the equipment and come to a consensus on 2-4 options that would provide adequate noise control.

Mr. MacQuinn noted that in response to Attorney Pileggi's allegation that they were not invited to Mr. Reuter's measurements, the applicant was not invited to Mr. Wallace's measurements. Mr. MacQuinn reminded the Board that the applicant has done everything requested of them so far, however it doesn't seem to satisfy the Board or residents.

Mr. Aylen reiterated the quarry was not operating the three days measurements were taken. He added that Mr. Wallace was only there to establish an ambient noise level, and not to listen to the quarry. Mr. Gammelin stated Mr. Aylen's comments were not correct. He cited testimony from Mrs. Shencavitz stating the quarry was "not making as much noise as they usually do".

Attorney Collier suggested that the process is that the applicant submits an application. The application is found complete or not. Upon being found complete the Board can then ask for clarification, however they cannot ask for new information. Those in opposition can submit information to support their position. The Board's options are:

- To approve the application.
- To deny the application because the information is not acceptable to the Board.
- Request more supporting information.
- Hire an expert to assist in the explanation of the information received.

Mr. Ashmore felt there was not enough information regarding noise for the Board to make a decision. Chairman Hanley agreed. Ms. Randolph felt that using a decibel level would help better clarify the situation. If both parties can come to an agreement on a decibel level, then further discussion would not be necessary. Attorney Collier disagreed. New code requirements can't be added. He did not believe the parties involved would come to an agreement regarding noise levels. Ms. Randolph noted there was nothing in the ordinance that prohibited the Board from setting a decibel level. Attorney Collier felt such an action would be overturned on appeal.

Mr. Ashmore appealed to both the applicants and the opponents to try to come to an agreement. There have been some reasonable noise attenuation techniques discussed. Ms. Randolph reiterated that if a decibel level could be set, the applicant could then determine the best way to meet the level, considering their equipment and finances. It sets a limit, while allowing the applicant the freedom to achieve it to the best of their abilities.

Attorney Collier felt that the Board could set certain measures as the best practical means, however the Board would have to have a range of options. While the Board cannot set decibel

levels, they can set measures they believe will help with noise attenuation. Attorney Collier reiterated the applicant is supposed to present the Board with a number of options, provide evidence that these options have been used elsewhere. The neighbors are allowed to oppose the suggestions, and the Board decides the issues requires further clarification, or decides on what has been submitted.

Mr. MacQuinn stated they have provided advice from experts, and the Board has not accepted the information provided.

Mr. Kiley noted he would like to see more information and more options for the Board's consideration. He was inclined to have an expert in to clarify some of the information received. Chairman Hanley agreed that more data was needed.

Attorney Collier disagreed. The applicant has presented the Board with how they intend to operate the quarry. If the Board is not happy with the submittal, then the solution is to deny the application on the basis that the Board did not receive the information they should have had to make a decision. Additionally data on why the chosen methods were the best practicable methods was supposed to have been supplied as well. It seemed to be the Board's consensus that they were not satisfied by the submissions.

Attorney Bearor did not agree with the burden Attorney Collier assigned the applicant. He felt the Board could in fact impose standards based on what they've learned during the hearing.
Attorney Bearor suggested that if an expert were brought in to discuss the issue of noise attenuation, the Board could continue consideration of the noise issue to a later date and in the meantime provide the applicant with how the Board intends to deal with the issue of Grandfathering. Attorney Bearor's position was that the issue of Grandfathering was not under consideration. The application was found complete, and therefore determined to be grandfathered. If Grandfathering is going to be revisited, and it could have a substantive effect on the viability of the application, then the applicant has no interest in spending more time and money on other issues.

Mr. Ashmore agreed. Mr. MacQuinn agreed. Chairman Hanley stated the forum would be provided to the public to discuss the issue of grandfathering. The Board has stated this multiple times. Attorney Bearor asked what happens after the discussion.

Attorney Collier stated it's not a public hearing, despite what the people in the audience may think or want to happen. Public comment does not have to be allowed on a jurisdictional matter of the application. Attorney Collier's advice was to not hear from the public on the question of grandfathering. Attorney Collier stated he has consulted with attorneys from MMA three times and they concur. They also said that if the Board decides to they can take evidence in. It would be Attorney Collier's opinion that the Board should not take evidence from the public. If Attorney Collier's in error, then he's confident Attorney Pileggi will appeal.

Ms. Clifford asked for clarification. She thought the issue of sound was to be decided, and the discussion suddenly turned to grandfathering. Chairman Hanley noted the issue of sound was really still the issue at hand. Attorney Bearor stated he brought grandfathering up because if

experts will be brought in at the cost of the applicant, then the applicant may be disinclined to do so if the issue of grandfathering might still curtail the application at this late date. Mr. MacQuinn agreed; if the issue of grandfathering is still to be determined, then why proceed with further review of the application?

Ms. Funderburk quoted Attorney Collier, "the Planning Board is not a legislative body". The Planning Board cannot change any definition laid out in the quarrying ordinance. If grandfathering was granted to the quarry on grounds that stone previously quarried had been removed and allowed it to be defined as quarrying, then Ms. Funderburk feels the Planning Board has broken the ordinance. Ms. Andrews recalled the definition of quarry referred to was in the LUZO, not in the quarry ordinance.

Attorney Collier felt that discussion of grandfathering should not be held now. He suggested the applicant could ask the Planning Board for a stay on the proceedings. The question of grandfathering could be resolved in the Board of Appeals. Attorney Bearor noted that if there's a stay it would be based on this record and this decision. However it's possible the final decision has not been made, as further discussion is planned. Attorney Pileggi felt it made the best sense to get through the Planning Board process and have the Board of Appeals deal with all the issues at once.

Which led the discussion back to the issue of sound.

Charlotte Singleton suggested a site visit while the quarry is in operation. She felt the Board did not have a clear idea of the situation.

Attorney Collier reiterated the options:

- Get the applicant and residents to agree on a decibel level; they don't seem willing to do that.
- Get clarification on the evidence presented. Hire an expert to clarify what's been submitted.
- Consider the issue of noise with the information submitted for approval or disapproval. Additionally conditions can be set by the Board.

Chairman Hanley suggested comprising a list of best practicable measures, ask the applicant to employ them, and then observe the operation with the measures in place to verify their success. Ms. Randolph didn't feel she had the expertise for knowing the best practicable measures. Nor did she feel enough information had been given to make a decision. Ms. Andrews agreed that the Board was not in a place to make a decision. Mr. Kiley did not feel having the applicant try various options to determine effectiveness was acceptable because of the cost to the applicant.

Attorney Collier felt the applicant was responsible for figuring out how the Board can quantify a qualitative standard. The Board could go through a number of options and review. A few more options than what was currently available would be better. He hoped the Board could have a list of options, with the applicant's explanation as to how they're the industry standard. Without a list of options to discuss, the Board is naturally grasping at whatever options are being suggested.

Mr. Kiley suggested telling the applicant that at this juncture that they do not have enough information to make a decision, and the Board requests the applicant present their best practicable solutions in the context of other options at the next meeting. The Board will have an expert on hand to juxtapose the options with expert testimonial, as well as testimonial from the opposition, with the hope that the Board can approve or deny the application.

Attorney Bearor agreed with Mr. Kiley's proposal. Attorney Pileggi felt that if the Board feels that sound attenuation requires an independent opinion then Attorney Pileggi had no objection.

Mr. Kiley stated he had an interest in what the decibel levels are. He wondered if the applicant can provide a comparison. For example, what sound level is a chainsaw?

Ms. Randolph pointed out that Attorney Pileggi suggested rejecting the application. She asked if the Board did reject the application, what the next step would be.

Attorney Collier stated that the application would be denied based on noise, move forward with discussion on buffering, perhaps discuss the issue of grandfathering, and then create an overall Finding of Fact and Conclusion of Law. That would leave the entire application ready for appeal, even though the rejection of the noise section would render the application denied.

It was the consensus of the Board to meet again to hear the applicant's findings on more options for sound attenuation. In the meantime an expert would be found to attend the meeting on the behalf of the Board.

CHAIRMAN HANLEY MOVED, WITH MR. ASHMORE SECONDING, TO CONTINUE THE MEETING TO A DATE TO BE DETERMINED BY DOODLE POLL. MOTION APPROVED 5-0.

III. OTHER

There was no other business.

IV. Adjournment

MR. KILEY MOVED, WITH MS. RANDOLPH SECONDING, TO ADJOURN THE MEETING. MOTION APPROVED 4-0.

Meeting was adjourned at 9:45 PM.