

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING MINUTES
DATE: October 20, 2021
Town Hall Meeting Room,
21 Sea Street, Northeast Harbor and via Zoom**

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

Public Present: Ara Tourian, Attorney Roger Katz, Attorney Daniel Pileggi, Attorney Matt Manahan, Kim Heist, Attorney Ed Bearor, Tim Pease, Rachel Thompson, Jeff Gammel, Andy Odeen, Acadia National Park Representative John T. Kelly, Mark Bergeron, Applicant Paul MacQuinn, Stephen Salsbury, Janet Ellis, David Shields, Maureen McGuire, H. Scott Stevens, Hans P. Utsch, Celeste Lindsey, Gordon Robb, Lincoln Millstein, Dick Broom, Elizabeth Roberts, Janet Leston Clifford, Stephen Krasinski, Tricia Bowie, Katrina Carter, Jane, Kelly O’Neil, Attorney James Collier

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

I. Call to order 6:00 p.m.
Chair William Hanley called the Meeting to order at 6:00. Board Members present were noted.

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 One (R1)
 - PURPOSE:** Review Quarry License Application.

CEO Keene confirmed adequate Public Notice. Abutters were notified.

Attorney for the Applicant Ed Bearor summarized that the Planning Board has made findings on all review criteria. After the September 30, 2020, meeting, it came to light that the Applicant’s easement over the Crane Road to the Quarry site granted to them in 1981 is only 30 feet in width. The CEO advised the Applicant that the width was not sufficient. The Applicant has since obtained a 50-foot-wide easement, which was deemed

1 insufficient at the May 2021 meeting. A new easement was submitted to the Board. That
2 easement was found to include an inaccurate description; Attorney Bearor corrected the
3 inaccuracy and submitted a revision the day of the meeting.

4
5 Attorney Bearor requested direction on how the Board will proceed. There are positive
6 votes on all review criteria, including the road. At the time the road was first reviewed,
7 road reconstruction was not deemed necessary.

8
9 Attorney for several abutters Daniel Pileggi pointed out that the Planning Board closed
10 the hearing process to receiving new evidence. The Applicant has however continued to
11 submit new evidence. Additionally, the Board set submission deadlines. This latest
12 submission was made the day of the meeting. It was Attorney Pileggi's position that the
13 Board should not accept the new evidence. If the Board accepts new evidence from the
14 Applicant, then it should accept new evidence from the public as well.

15
16 Attorney Pileggi believed the road standard requirements have not been met.
17 Additionally, when the Application is looked at as a whole, several other standards have
18 not been met including the standards on noise and buffering and screening. The
19 Application should be denied based on these issues.

20
21 Attorney for Hans Utsch and Julia Merck Matt Manahan echoed Attorney Pileggi's
22 sentiments. In September 2020 Attorney Manahan submitted a letter from engineer
23 Mark Bergeron. Mr. Bergeron's opinion is that the Application does not meet the
24 requirements of the Quarrying Licensing Ordinance (QLO). Attorney Manahan noted that
25 Mr. Bergeron is in attendance and prepared to summarize his findings.

26
27 Additionally, Attorney Manahan submitted a letter from noise consultant Mark Bergeron.
28 Mr. Bergeron's opinion was that the Application does not meet the noise control
29 requirements of the QLO. Attorney Manahan proposed the Applicant be required to meet
30 the DEP's noise control standards as a way to address the ambiguity of the QLO's noise
31 provisions. Attorney Manahan reiterated that meeting the DEP's noise control standards
32 is the only way to protect surrounding properties and properties across Somes Sound.
33 The Applicant has refused to do this. Further, the Applicant has failed to estimate noise
34 levels at the property line and therefore has not complied with Section 6.1.J of the QLO.

35
36 Attorney Manahan sent an email to the Board regarding the Right of Way (ROW) issue.
37 He reiterated Attorney Pileggi's statement that the Applicant continues to submit new
38 information to the record, despite asserting the hearing is closed. Allowing the
39 Applicant's submissions but not those of other parties violates the due process rights of
40 those parties and is not proper procedure. Attorney Manahan requested to be heard on
41 these issues, or to have the Applicant's new submissions excluded from the record.

42
43 Attorney for various Hall Quarry Residents Roger Katz concurred with the sentiments of
44 Attorneys Pileggi and Manahan.

1 Attorney Katz stated that the late submission of the easement language does not provide
2 other parties the ability to make an assessment on whether the easement appropriately
3 addresses the issue. Attorney Katz argued that the easement is inadequate, as it provides
4 the Grantor the ability to veto any changes proposed. Moreover, it has been suggested
5 that the Application as a whole must be reviewed; there are more than just the criteria as
6 stated in the QLO – provisions of the Comprehensive Plan must also be considered and
7 should weigh heavily on the final decision. Additionally, the Land Use Zoning Ordinance
8 (LUZO) must be considered. The Board’s Counsel has stated in the past that any previous
9 decisions made during the process may be revisited. Attorney Katz believed several
10 decisions would benefit from further review.

11
12 Attorney Katz maintained that the Applicant has not submitted an easement that
13 adequately shows they can proceed. He reminded the Board that it is not the burden of
14 the neighbors or any other parties to prove the Application is inadequate; it is the
15 Applicant’s burden to meet the standards of the QLO. If the Applicant fails to meet any
16 of the QLO standards the Application must fail. Even if the Planning Board accepts the
17 Applicant’s submission, other parties should be given the right to digest the information
18 and respond to it before proceeding further.

19
20 Chair Hanley referred to the Planning Board’s May 3, 2021, Motion. He read the Motion
21 from the May 3, 2021, Minutes:

22
23 *“MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO REQUEST*
24 *FROM THE APPLICANT THE FOLLOWING:*

25 *1 IF NO WAIVER IS GRANTED, HOW EXACTLY DOES THE APPLICANT*
26 *INTEND TO MEET THE STANDARDS IN THE SUBDIVISION ORDINANCE*

27 *2 THE LANGUAGE OF THE ROW EASEMENT AND A PLAN SHOWING*
28 *THE PRECISE LOCATION OF THE ROW IN ORDER TO MAKE A COMPARISON*
29 *OF THE EASEMENT TO THE PLAN. THE PLAN SHOULD SHOW ALL OF THE*
30 *LANDS THAT THE EASEMENT CROSSES AND WHO OWNS THOSE LANDS.*

31 *3 DISCUSSION WITH REGARD TO THE MMA MANUAL PAGE 72,*
32 *REGARDING NON-ZONING WAIVERS AND THE STANDARDS FOR GRANTING*
33 *THEM, INCLUDING CASELAW ON WHAT THOSE STANDARDS ARE.*
34 *WITH THE INTENT OF HAVING THE NEXT MEETING AS SOON AS CAN BE*
35 *SCHEDULED.”*

36
37 Regarding the third request in the Motion, Attorney Collier advised that this issue is one
38 the Planning Board can waive. It does not meet the standard of a variance requiring the
39 Board of Appeals. It can be addressed by the Planning Board using the criteria in Section
40 4.3.

41
42 Chair Hanley noted waiver requests for roads have been before the Planning Board over
43 the years. They generally consist of a review of standards of section 5.14, and a review
44 and written statement from the Fire Chief regarding emergency vehicle access. Each case
45 is unique. In this case the road is substandard.

1 A 50-foot ROW has now been granted to the Applicant. Easement language was found to
2 be inadequate, and new language was provided that no Board Members have yet seen.
3 Regarding the Planning Board's requests, it appears items to make the situation compliant
4 were not submitted. A 50-foot ROW has been submitted; further information
5 demonstrating compliance has not.

6
7 Attorney Collier noted the lot has no frontage, and no proper road leading to it. When
8 there is not appropriate width of lot to build a road then the lot cannot be developed.
9 Waiving this requirement sets precedent for others in similar situations. At the last
10 meeting, the Planning Board clearly stated their requirements. The Applicant has not
11 provided what was requested by the Board. He suggested the Board can deny the
12 Application.

13
14 Attorney Collier and Attorney Bearor disagreed on whether an appropriate cross-section
15 of the road was provided.

16
17 CEO Keene cited Section 5.14.1 of the Subdivision Ordinance. Street design and
18 construction standards are specific in that section. The following required information
19 does not appear to have been included in the submission:

- 20 - 50-foot ROW
21 - Road dimensions
22 - Shoulders
23 - Grade
24 - Cul de sac information and specifications including dimensions and turning radius

25
26 Additionally, what cul de sac information the Applicant did provide indicates it is on the
27 Applicant's property. It is unclear whether the cul de sac may be accessed by others. Fire
28 Chief Bender reported that tree trimming and the repair of potholes on the road would
29 be necessary.

30
31 The Motion made at the May 3, 2021, Meeting asks of the Applicant *"IF NO WAIVER IS*
32 *GRANTED, HOW EXACTLY DOES THE APPLICANT INTEND TO MEET THE STANDARDS IN THE*
33 *SUBDIVISION ORDINANCE"*

34
35 Attorney Bearor stated the 50-foot ROW, width of road, crown, ditches, and shoulders
36 are all presented as required by the Subdivision Ordinance. Another branch of the road
37 has no cul de sac. The Applicant requests a waiver, and the Fire Chief was at the site and
38 only suggested some tree trimming.

39
40 Attorney Bearor stated that Section 6.2G of the QLO states that only new driveways and
41 access ways must meet the standards. This road is not new. The Planning Board approved
42 the road access earlier in the review process. The Applicant does not have to meet any
43 road standards because it is an existing road. If required, the Applicant can build a road
44 within the 50-foot ROW. The cul de sac can be shown on a plan if required.
45

1 Attorney Bearor argued that the Planning Board has no history of addressing roads within
2 the context of the QLO.

3 The QLO states clearly that an existing road is not required to be brought up to standard.
4 Other ordinances do not apply.

5
6 Chair Hanley disagreed; the Board has reviewed road standards beyond those of
7 subdivision lots. Attorney Bearor contended that the Applicant is only required to meet
8 standards included in the QLO.

9
10 Chair Hanley pointed out that the use of this road is far different from other roads for
11 which accommodations have been made. This case includes potentially heavy
12 commercial traffic shared with residential traffic. LUZO and Subdivision Ordinance both
13 apply in addition to the QLO.

14
15 Attorney Bearor disagreed; other ordinances do not apply because this is not a new
16 driveway or access way.

17
18 Attorney Bearor read Section 6.2G of the QLO: *“Any new driveway or road shall conform*
19 *to the standards set forth in the Town of Mount Desert Land Use Zoning Ordinance...”* The
20 driveway and road are not new; therefore, they are not required to comply with the
21 standard. The road must be new to make the requirement applicable.

22
23 Ms. Randolph pointed out that the Ordinance states “new driveway” or “road.” It does
24 not specifically state the road must be new.

25
26 Chair Hanley referred to Section 6B.11.2 of the LUZO which states that if more than two
27 lots are accessed by the same private road, then it must meet the street design and
28 construction standards of Section 5.14 of the Subdivision Ordinance. Section 5.14.1
29 includes standards such as minimum ROW width, road width, maximum grade, minimum
30 center line radius, crown, angle of the street. The plan shows a ROW and a road section
31 detail, but it is not complete when looking at the requirements.

32
33 Attorney Bearor maintained that Section 6.2G of the QLO does not require the Applicant
34 to build a road. The Planning Board merely asked for information. Chair Hanley
35 disagreed.

36
37 Attorney Collier read Section 2.8 of the QLO: *“This Ordinance shall in no way impair or*
38 *remove the necessity of compliance with any other rule, regulation, bylaw, permit or*
39 *provision of law. It is anticipated that the application will be reviewed concurrently with*
40 *this ordinance and the requirements of the Land Use Zoning Ordinance. Where this*
41 *Ordinance imposes a greater restriction upon the use of the land, buildings, or structures,*
42 *than any other rule, regulation, bylaw, permit or provision of law, the provisions of this*
43 *Ordinance shall prevail.”*

44
45

1 Attorney Bearor argued that the courts made a determination on the application related
2 to other ordinances.

3
4 If the Planning Board tries to incorporate other ordinances into this one and it goes to
5 court the issue will be sent back; the Quarry Application is subject to the QLO alone and
6 the QLO does not require an existing road to be brought up to subdivision standards.

7
8 Attorney Collier referred to Page 19 in the Decision "Harold MacQuinn versus the Town
9 of Mount Desert". Attorney Collier read from the decision, *"Nothing in this decision
10 undermines the concurrent review anticipated by Section 2.8 of the QLO. The Planning
11 Board is still expected to review Quarrying License Applications concurrently under both
12 the QLO and the LUZO."*

13
14 Attorney Bearor assured the Board that the Applicant is capable of building a road to any
15 standards deemed necessary and can provide proof of their ability to do so. However,
16 they will challenge whether such a road is required. Road reconstruction is expensive,
17 and unnecessary and not required under the QLO. Traffic on the road has remained
18 unchanged for 30 years.

19
20 Attorney Pileggi believed the Applicant was conflating the standard applying to roads
21 being built on the quarry site to part of the QLO.

22
23 QLO Standard 2.8 directs the Planning Board to refer to the LUZO concurrently with the
24 QLO. Doing so leads the Board to LUZO Section 6B.11.2, which reads *"if more than two
25 lots are accessed by the same private road it must meet the street design and construction
26 standards of Subdivision Ordinance Section 5.14."*

27
28 Attorney Pileggi added that under the Freedom of Access Act, the Town provided
29 correspondence with the Applicant regarding this issue, which was raised by the CEO in
30 August 2019. In those emails the Applicant never contended that the road standards did
31 not apply. In 2021 the Board addressed the matter and provided three specific requests
32 of the Applicant. At that time, the Applicant did not contend that the road standards did
33 not apply. The Applicant did not provide what the Planning Board requested at that
34 meeting. Section 2.8 of the QLO refers the Board to Section 6B.11.2 of the LUZO. Section
35 6B.11.2 refers to Section 5.14 of the Subdivision Ordinance. The standards have not been
36 met. There are deficiencies regarding the Application materials in terms of the Crane
37 Road's compliance with the clear standards other multi-lot private roads are held to. The
38 Application should be denied.

39
40 Attorney Manahan agreed with Attorney Pileggi's assessment. Attorney Bearor's
41 interpretation of Section 6.2G of the QLO is incorrect. He believed the Planning Board is
42 on strong ground for rejecting the notion that the Subdivision Standard does not apply.

43
44 Attorney Katz concurred with Attorneys Pileggi and Manahan.
45

1 He added that the Applicant has been aware of the deficiency for over two years and has
2 failed to correct the situation. It was Attorney Katz' opinion that the Application should
3 be denied for failure to meet the criteria, rather than extend further the opportunity to
4 fix an issue that the Applicant has known about for two years.

5
6 Attorney Bearor stated that the Applicant's focus when first advised of the issue was to
7 widen the road to 50 feet. Other standards did not appear to be applicable. He
8 contended that the Planning Board also did not believe other standards were applicable
9 at that time; road standards were reviewed and addressed in the Application and a vote
10 of approval is on record. At the time road standards were first reviewed there was no
11 discussion of improving the road. The road is not required to be brought up to road
12 standards. It is possible to build a road to the standards set forth. A plan can be drafted
13 showing a road can be built to the standards. Attorney Bearor argued the directives
14 assigned at the May meeting did not translate to the specificity now being discussed.

15
16 Mr. Ashmore was not convinced the road can be built. The Easement Grantor controls
17 what can be done to the road. Attorney Bearor stated the Grantor cannot withhold
18 authority unreasonably. He believed the condition set by the Grantor was an effort to
19 avoid anything that might interfere with the Grantor's business and was included at the
20 behest of his attorney. It would not be a problem. If it is a problem, it is the Applicant's
21 problem to address. Attorney Bearor reiterated the Applicant is not required to construct
22 a road. If the Applicant realized the Board required this much detail, they would have
23 provided the appropriate plans.

24
25 Mr. Ashmore believed the issue must be addressed regarding whether the Applicant has
26 the right and ability to build such a road.

27
28 Chair Hanley reread the three requests from the May 3, 2021, Minutes:

29 *"1 IF NO WAIVER IS GRANTED, HOW EXACTLY DOES THE APPLICANT*
30 *INTEND TO MEET THE STANDARDS IN THE SUBDIVISION ORDINANCE*

31 *2 THE LANGUAGE OF THE ROW EASEMENT AND A PLAN SHOWING*
32 *THE PRECISE LOCATION OF THE ROW IN ORDER TO MAKE A COMPARISON*
33 *OF THE EASEMENT TO THE PLAN. THE PLAN SHOULD SHOW ALL OF THE*
34 *LANDS THAT THE EASEMENT CROSSES AND WHO OWNS THOSE LANDS.*

35 *3 DISCUSSION WITH REGARD TO THE MMA MANUAL PAGE 72,*
36 *REGARDING NON-ZONING WAIVERS AND THE STANDARDS FOR GRANTING*
37 *THEM, INCLUDING CASELAW ON WHAT THOSE STANDARDS ARE."*

38
39 Chair Hanley read from Section 2.8 of the Quarrying Licensing Ordinance:

40 *"This Ordinance shall in no way impair or remove the necessity of*
41 *compliance with any other rule, regulation, bylaw, permit or provision of*
42 *law. It is anticipated that the application will be reviewed concurrently with*
43 *this ordinance and the requirements of the Land Use Zoning Ordinance.*
44 *Where this Ordinance imposes a greater restriction upon the use of the*
45 *land, buildings, or structures, than any other rule, regulation, bylaw, permit*

1 *or provision of law, the provisions of this Ordinance shall prevail.”*
2

3 In the Motion, the Applicant was asked to show how the Applicant intends to meet the
4 standards set forth in the Subdivision Ordinance.

5 The Applicant contends they do not have to meet those standards. The Applicant is
6 capable of building a road to the standards and can provide a plan to show it. If a judge
7 finds that the Applicant must build the road then the Applicant will build the road.
8

9 Chair Hanley believed Section 2.8 of the QLO states the QLO must be read concurrently
10 with the LUZO. There is case history of the Planning Board reviewing similar cases. The
11 Board is working towards finding a resolution, and the Applicant returned with what
12 seems to be a refusal to do it.
13

14 Attorney Bearor argued the Applicant has not refused to do it. The QLO does not require
15 the Applicant to do it. If the Applicant is wrong, then the road can and will be built to the
16 subdivision standard. The Applicant can do it but will not voluntarily agree to do so. He
17 suggested the Board make it a condition of approval on the Application and the Applicant
18 will investigate the requirements.
19

20 Chair Hanley summarized that the Applicant submitted a plan and easement language.
21 When the easement language was deemed deficient, new language was supplied to the
22 Board the night of the meeting. The Board was not in any position to consider a
23 submission on such short notice. Item 1 of the May 3, 2021, Motion has not been
24 addressed by the Applicant. Item 3 of the Motion, regarding waivers, has not been
25 discussed.
26

27 Attorney Collier noted two types of waivers the Applicant can request. A waiver of
28 submission requirements can be requested. Such a request must be in writing and state
29 the specific requirements being requested to waive. The Applicant has not done this. A
30 waiver of performance standards can be requested; essentially a waiver of how the road
31 may be built. Attorney Bearor stated that such a waiver request was submitted to the
32 Board in writing.
33

34 Additionally, there are Zoning Waivers and non-Zoning Waivers. The Board of Appeals
35 must hear Zoning Waivers. The Planning Board can decide Non-Zoning Waivers. Attorney
36 Collier deemed this a non-Zoning Waiver the Planning Board can decide based on the
37 standards. The Board must first determine whether LUZO Section 6B.11.2 applies. If it is
38 deemed Section 6B.11 applies, then the Planning Board must determine whether the
39 Applicant has shown through submittals their intention to comply.
40

41 Attorney Collier advised that the Board could proceed through this analysis and decide
42 whether Section 6B.11.2 applies and whether the Applicant has met the standards with
43 their submissions to date. If the standards have not been met, the Board must decide
44 whether to grant the Applicant more time to come back with additional information or
45 deny the Application.

1 It was Chair Hanley's feeling that Section 6B.11 applies. Attorney Collier concurred. He
2 worried about the precedent it would set to disregard Section 6B.11.2.

3
4 Attorney Bearor reiterated that the QLO refers only to new roads. The road in question
5 is not new and therefore subdivision rules do not apply. If it is later determined the road
6 is required, the applicant will build it.

7
8 Attorney Manahan referred to Article 11 of the QLO which states that if there is a conflict
9 between this ordinance and any other Town ordinances, the stricter language shall apply.
10 It is clear the Subdivision Ordinance does apply. The easement granted states the owner
11 can decline to allow any changes to be made on the road if the decision is made within
12 his reasonable discretion. This provision does not allow the Applicant to do what is
13 necessary to comply with the ordinance. The easement does not convey sufficient title,
14 right, or interest. Mr. Ashmore agreed with Attorney Manahan's assessment; he felt it
15 was a serious deficiency.

16
17 Chair Hanley polled the Board. They were in full agreement that Section 6B.11.2 applies
18 to the Quarry. Attorney Collier was also in agreement.

19
20 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THAT SECTION 6B.11 OF THE
21 LAND USE ZONING ORDINANCE APPLIES WITH REGARD TO THE QUARRY.

22 VOTE:

23 MEREDITH RANDOLPH: AYE

24 CHRISTIE ANASTASIA: AYE

25 DAVID ASHMORE: AYE

26 TRACY LOFTUS KELLER: AYE

27 CHAIR WILLIAM HANLEY: AYE

28 MOTION: APPROVED 5-0.

29
30 Chair Hanley believed the Board must now determine whether the submissions meet the
31 standards of Section 6B.11.2.

32
33 Attorney Collier referred to his previous statement regarding the two types of requests
34 for waiver. Generally, it is not usually the Board's job to look at the specific nature of the
35 easement. Practically speaking, it makes no sense that the Applicant must receive
36 permission from the owner to make any changes deemed necessary by the Town.

37
38 Attorney Bearor stated that in light of the Board's determination that Section 6B.11.2
39 applies, the submissions do not meet the standards the Board requires. Attorney Bearor
40 requested the meeting be continued to allow the Applicant time to present more detailed
41 plans. Additionally, the Applicant will return to the landowner to remove the clause in
42 the ROW.

43
44 Chair Hanley requested road width and shoulder width be included on the plan.
45

1 Mr. Ashmore noted that if additional rights are received from the landowner, they should
2 include the right to construct and maintain the road.

3
4 Attorney Collier pointed out that the process has been that the Applicant submits and
5 then opponents submit. The Board can also request technical changes to the Application.
6 The opponents should be given opportunity to comment on any changes made. Mr.
7 Collier did not believe it meant a review of all that has gone before is required.

8
9 Submission standards previously stated were discussed. Chair Hanley asked for the
10 Board's opinion on requesting further submissions and continuing the meeting, or,
11 alternatively, denying the Application.

12
13 Ms. Randolph stated she was somewhat inclined to deny the Application, but she did not
14 want approval or denial hinging this issue alone.

15
16 Ms. Anastasia believed that based on the discussion, there is the ability to change
17 technical deficiencies. The Applicant is asserting the condition can be met. The Planning
18 Board will not give a waiver if the condition can be met. She did not feel this was the
19 appropriate time to vote to deny the Application.

20
21 Mr. Ashmore believed the Applicant should get the opportunity to come back with the
22 materials requested. He believed there was some misunderstanding on their part, which
23 has now been clarified. If the Applicant can get what has been deemed necessary, then
24 this portion of the Application should be deemed sufficient. There are other portions of
25 the Application Mr. Ashmore would like to revisit.

26
27 Ms. Loftus Keller agreed the Board should allow the Applicant to provide a chance to
28 resubmit. The current easement language is a stumbling block.

29
30 Chair Hanley agreed with Ms. Loftus Keller; the Applicant should be allowed the
31 opportunity to resubmit and show compliance.

32
33 MR. ASHMORE MOVED, WITH MS. ANASTASIA SECONDING, TO REQUEST THAT THE
34 APPLICANT RESUBMIT A PLAN AND SUPPORTING DOCUMENTATION SHOWING HOW THE
35 APPLICANT WILL MEET A STREET DESIGN AND CONSTRUCTION STANDARDS OF SECTION
36 5.14 OF THE SUBDIVISION ORDINANCE; IF NOT, A SPECIFIC REQUEST FROM THE
37 APPLICANT FOR A WAIVER OF SUBMISSION REQUIREMENTS PER THE QUARRYING
38 LICENSING ORDINANCE SECTION 4.2 AND/OR A SPECIFIC REQUEST WITH REASONING FOR
39 A WAIVER OF PERFORMANCE STANDARDS PER QUARRYING LICENSING ORDINANCE
40 STANDARD SECTION 4.3.

41
42 Additionally, Attorney Collier would like to see revised easement wording allowing the
43 Applicant more flexibility, as well as a more adequate ROW description noting to the
44 center and not the side.

1 Mr. Ashmore noted the cul de sac's location should also be addressed. Attorney Bearor
2 requested clarification; he was under the impression he needs to make an argument
3 regarding why the Applicant ought not be required to build it.

4 Mr. Ashmore stated the cul de sac is an issue that requires resolution. Attorney Collier
5 opined that the Applicant normally discusses with the CEO how a cul de sac should be
6 positioned and the reasoning behind it. The Fire Chief is also brought into this type of
7 conversation.

8
9 Ms. Anastasia asked about technicalities such as ROW language and the cul de sac issue
10 that are not included the Motion. She did not want to be remiss in the Board's
11 specificity of their needs. Attorney Collier advised the Board that the Applicant has now
12 heard the issues and knows what the Planning Board is looking for. Ignoring what has
13 been stated during discussion is at the Applicant's risk.

14
15 VOTE:

16 DAVID ASHMORE: AYE

17 CHRISTIE ANASTASIA: AYE

18 MEREDITH RANDOLPH: AYE

19 TRACY LOFTUS KELLER: AYE

20 CHAIR WILLIAM HANLEY: AYE

21 MOTION: APPROVED 5-0.

22
23 Discussion ensued regarding the Motion affirming that Section 6B.11.2 applies. It was
24 agreed that adding Findings of Facts with regard to QLO Section 2.8 will clarify the issue
25 and prevent it from becoming a future point of contention. A review of the prior Motion
26 was made.

27
28 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO AMEND THE PREVIOUS
29 MOTION TO INCLUDE THE FINDINGS OF FACT THAT SECTION 6B.11.2 APPLIES, BASED
30 UPON THE UNDERSTANDING OF QUARRYING LICENSING ORDINANCE SECTION 2.8,
31 "CONFLICTS WITH OTHER ORDINANCES" WHICH STATES THAT "IT IS ANTICIPATED THAT
32 THE APPLICATION WILL BE REVIEWED CONCURRENTLY WITH THIS ORDINANCE AND THE
33 REQUIREMENTS OF THE LAND USE ZONING ORDINANCE. WHERE THIS ORDINANCE
34 IMPOSES A GREATER RESTRICTION UPON THE USE OF THE LAND, BUILDINGS OR
35 STRUCTURES, THAN ANY OTHER RULE, REGULATION, BYLAW, PERMIT OR PROVISION OF
36 LAW, THE PROVISIONS OF THIS ORDINANCE SHALL PREVAIL."

37 VOTE:

38 MEREDITH RANDOLPH: AYE

39 CHRISTIE ANASTASIA: AYE

40 DAVID ASHMORE: AYE

41 TRACY LOFTUS KELLER: AYE

42 CHAIR WILLIAM HANLEY: AYE

43 MOTION: APPROVED 5-0.

44
45

1 Attorney Collier believed that when the road standards were first reviewed, he stated at
2 that time that the road was grandfathered. He wondered if the road standards should be
3 re-reviewed. Chair Hanley believed a better quantified submission on the road is required
4 first. More data is required to determine whether the issue needs to be revisited.

5 Attorney Manahan inquired about revisiting other issues. He is also mindful that the
6 Board would like to limit input from others unless information is requested from the
7 Board. He wondered if there were specific questions the Board would like to focus on, or
8 issues that may be revisited such as Noise. He requested of the Board to be allowed to
9 address some of those items seen as deficiencies.

10
11 Chair Hanley believed the Board has been thorough and diligent and accommodating on
12 the checklist items reviewed. The Board will consider revisiting issues at the point of a
13 final vote, if such a need is determined after reviewing and quantifying the different
14 sections.

15
16 Attorney Collier opined that the question of the road, due to the circumstances is a good
17 example of a standard perhaps worth revisiting. Otherwise, he did not believe revisiting
18 issues should be done.

19
20 Chair Hanley noted the Board hoped to reach conclusion on the issue, however they do
21 have an obligation to the Town to be as diligent in their review as possible.

22
23 Submission deadlines and future meeting dates were discussed.

24
25 Attorney Manahan requested that more time be given to review the Applicant's
26 submissions. A consultant must review submissions to ensure they meet the
27 requirements of the QLO.

28
29 After some discussion, the Submission/Rebuttal schedule was revised to require:

- 30 - 30 days before the meeting date, Submissions from the Applicant must be received.
31 - 14 days before the meeting date, replies from other parties to the Applicant's
32 Submissions must be received.
33 - 7 days before the meeting date, a brief Rebuttal by the Applicant to those Replies
34 must be received.

35
36 Attorney Manahan argued the Board is allowing a lot of dispensation for the Applicant
37 with the length of time allowed for Submittals. The Applicant should have had the
38 appropriate Submittals for tonight's meeting. It is essentially a forgiving of failure to
39 comply with the requirements clearly stated at the last meeting.

40
41 Attorney Collier noted submissions dates are to allow the Board adequate time to review
42 the Submittals. Attorney Manahan argued that members of the Public are also affected
43 and should be taken into consideration. Other parties should be allowed the same
44 measure of dispensation given to the Applicant.

1 MS. RANDOLPH MOVED WITH MR. ASHMORE SECONDING, TO SET THE SUBMISSION
2 DEADLINES FOR THE APPLICANT AND OTHER PARTIES AS:

3 - 30 DAYS BEFORE THE MEETING DATE, SUBMISSIONS FROM THE APPLICANT MUST
4 BE RECEIVED.

5 - 14 DAYS BEFORE THE MEETING DATE, REPLIES FROM OTHER PARTIES TO THE
6 APPLICANT'S SUBMISSIONS MUST BE RECEIVED.

7 - 7 DAYS BEFORE THE MEETING DATE, A BRIEF REBUTTAL BY THE APPLICANT TO
8 THOSE REPLIES MUST BE RECEIVED.

9 VOTE:

10 MEREDITH RANDOLPH: AYE

11 DAVID ASHMORE: AYE

12 CHRISTIE ANASTASIA: AYE

13 TRACY LOFTUS KELLER: AYE

14 CHAIR WILLIAM HANLEY: AYE

15 MOTION: APPROVED 5-0.

16

17 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, TO CONTINUE THE MEETING
18 TO JANUARY 12, 2022, 6:00PM.

19 VOTE:

20 MEREDITH RANDOLPH: AYE

21 CHRISTIE ANASTASIA: AYE

22 DAVID ASHMORE: AYE

23 TRACY LOFTUS KELLER: AYE

24 CHAIR WILLIAM HANLEY: AYE

25 MOTION: APPROVED 5-0.

26

27 **III. Other**

28 There was no Other Business.

29

30 **IV. Adjournment**

31

32 The Meeting ended at 8:08PM and will be Continued to January 12, 2022.