

**Town of Mount Desert Planning Board  
Planning Board Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, March 27, 2019**

**Public Present:**

Attorney for the Shencavitz' and Aylen's Daniel Pileggi, Attorney for the Planning Board James W. J. Collier Esq., Freshwater Stone representative Andrew Odeen, Attorney for the Applicant Katie Foster, Joseph Tracy, Matt Morehouse, Kelly O'Neil, Elizabeth Halpern, Christopher D. Rawls, Carol Schaefer

**Board Members Present:**

Christie Anastasia, Chairman Bill Hanley, Joanne Eaton, Meredith Randolph, Dave Ashmore, and Tracy Keller

**I. Call to Order 6:00 PM**

Chairman Hanley called the meeting to order at 6:00PM. Board members present were noted.

**II. Approval of Minutes:**

March 13, 2019: MS. EATON MOVED, WITH MR. ASHMORE SECONDING, APPROVAL OF THE MARCH 13, 2019 MINUTES AS PRESENTED. MOTION APPROVED 3-0-2 (ANASTASIA AND RANDOLPH IN ABSTENTION).

**III. Subdivision Application(s)**

**Completeness Review:**

**Subdivision Approval Application #003-2018**

**OWNER(S):** Joseph P. Tracy

**AGENT:** Mathew Morehouse

**LOCATION:** Off Beech Hill Cross Road

**TAX MAP:** 009     **LOT:** 094-003     **ZONING DISTRICT:** Rural Woodland 2 (RW2)

**PURPOSE:** Divide a lot previously approved in a subdivision – "5.3 Acre Subdivision" (File 30 Number 112)

Ms. Eaton confirmed Abutters had been notified. Public Notice was not necessary. No conflict of interest was found.

Matt Morehouse, Agent for the Applicant, summarized that the Applicant is proposing division of a 5.3-acre lot into two lots. The surveys were shared with the Planning Board at the last meeting.

There is an undeveloped Right-Of-Way within the subdivision to the lot behind the lot in question. That ROW should have been developed at the time of the lots were divided. The

1 question at hand was whether the ROW was required to be built by the Applicant and  
2 whether the ROW should be built the entire length of the originally proposed ROW.

3  
4 After some discussion, it was confirmed that the voting members would be Ms. Randolph,  
5 Ms. Eaton, and Chairman Hanley.

6  
7 Mr. Morehouse explained that after the division of the lot, a private driveway will be  
8 required. This driveway is requested to be shared by the two newly-created lots in place of  
9 the 50-foot ROW that was never developed. The Applicant is asking for a waiver of  
10 submitting the design plan in lieu of entering the properties from the Beech Hill Cross Road  
11 through the proposed shared driveway. If a shared driveway is amenable to the Board, then  
12 the Applicant is asking for a waiver of submission of design plans and stormwater  
13 management because the ROW would not then be developed. If the Board will not approve  
14 this request the Applicant wondered if a road plan would require permitted approval  
15 through the Town, or a revisit to the Planning Board?

16  
17 CEO Keene provided some background information; in 1990 there was a Subdivision Review  
18 to divide the lot. The 1990 Application packet included no road specs, and the road was  
19 never mentioned and never constructed. None of the lots there are currently developed.  
20 Per the Ordinance, no construction can take place and no lots can be sold without the  
21 essential services in place, such as road and electricity. The current Applicant does not want  
22 to build the road to road standards. They prefer to bring a driveway only to their two lots.  
23 A ROW serving three or more lots must be built to road standards.

24  
25 Ms. Eaton asked if a waiver was granted, would that waiver be in perpetuity? And if  
26 someone buys the third lot will the Applicant be at least partially liable for the ROW to be  
27 built?

28  
29 Ms. Randolph noted there was nothing on the plan showing the Applicant's requested  
30 intent. Two users of a driveway create a right of way. A right of way needs to be included  
31 on the survey.

32  
33 Mr. Morehouse pointed out that the request will require a future curb cut and one of the  
34 lots will never use the proposed driveway created. As Mr. Morehouse understood it, a  
35 common road must be shown, but driveway entrances in a subdivision do not have to be  
36 shown. The Applicant is asking for a private driveway entrance approval. CES Keene agreed  
37 private driveways do not have to be shown on a subdivision plan.

38  
39 Ms. Randolph noted that the situation is that a right of way should have been built by the  
40 developer and wasn't. The Applicant is currently the developer. This is an attempt to  
41 bypass having to develop the right of way. CEO Keene noted they've asked for a waiver  
42 because they don't want to use the right of way. Mr. Morehouse noted the shared  
43 driveway would be a private right of way and not eligible for use by others in the  
44 subdivision. The Applicant is willing to forego their right to use the ROW.

1  
2 Mr. Ashmore suggested a including note on the survey stating that the ROW in place could  
3 only be used by the back lot, and others abutting the ROW did not have permission to  
4 access their property over the ROW.

5  
6 Ms. Randolph agreed if the two lots gave up their rights to the ROW it would not have to be  
7 developed to road standards. Mr. Ashmore added that the back-lot would not have to  
8 develop the ROW to road standards either if it served only the single lot. The ROW was  
9 created only to access the backlot; the ROW itself is on another parcel.

10  
11 Mr. Morehouse noted that a request for a waiver was currently in the application. The  
12 owner is amenable to whatever plan notes are required to give up the rights to the ROW. A  
13 private driveway is not required to be shown on the plan.

14  
15 CEO Keene noted the waiver must be on the plan. Only the Planning Board can grant such a  
16 waiver.

17  
18 Attorney Collier suggested a Negative Easement - a formal promise not to use an easement  
19 for a road. The Negative Easement can be referenced on the plan. He agreed with Ms.  
20 Randolph that the change should be included on the plan. All parties involved must sign off  
21 on the Negative Easement to avoid issues with the easement in the future.

22  
23 Mr. Morehouse noted that the Applicant is agreeable to adding notes to the plan to cover  
24 the conditions expressed at this meeting.

25  
26 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO FIND THE APPLICATION  
27 COMPLETE, SUBJECT TO SUBMISSION OF A NEGATIVE EASEMENT ACCEPTABLE TO THE  
28 BOARD AND NOTATION OF THE RECORDING OF THE NEGATIVE EASEMENT INCLUDED ON  
29 THE PLAN.

30  
31 It was noted the changes can be submitted to the Planning Board during final approval of  
32 the Application.

33  
34 A review of the Application packet was made.

35  
36 **Section 4.2.1, Information on the Applicant** was deemed Complete

37  
38 **Section 4.2.2, Information on Parcel to be Subdivided** was deemed Complete.

39  
40 **Section 4.2.3, Information on Subdivision** was deemed Complete.

41  
42 **Section 5.1, Buffer Strip** was deemed Not Applicable.

43  
44 **Section 5.2, Conformance with other Laws, Regulations** was deemed Complete.

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**Section 5.3, Construction Prohibited** was deemed Complete.

**Section 5.4, Ditches, Catch Basins** was deemed Complete.

**Section 5.5, Easements** was deemed Complete.

**Section 5.6, Dedication for Year-Round Housing** was deemed Not Applicable.

**Section 5.7, Lots and Density** was deemed Complete.

**Section 5.8, Sewage Disposal** was deemed Complete.

**Section 5.9, Land Not Suitable for Development** was deemed Complete.

**Section 5.10, Open Space Provisions** was deemed Not Applicable.

**Section 5.11, Wells** was deemed Complete.

**Section 5.12, Performance Bond** was deemed Not Applicable.

**Section 5.13, Plan Revisions After Approval** was deemed Complete.

**Section 5.14, Street Design and Construction** was deemed Not Applicable.

**Section 5.15, Access to Direct Sunlight** was deemed Complete.

**Section 5.16, Cluster and Workforce Subdivision** was deemed Not Applicable.

**Section 6A.1, Compatibility** was deemed Not Applicable.

**Section 6A.2, Erosion and Sedimentation Control** was deemed Not Applicable.

**Section 6A.3, Highway Safety** was deemed Not Applicable.

**Section 6A.4, Impact on Town Services** was deemed Not Applicable.

**Section 6A.5, Land Suitability** was deemed Complete.

**Section 6A.6, Lighting** Outdoor was deemed Not Applicable.

**Section 6A.7, Stormwater** was deemed Not Applicable.

**Section 6A.8, Vegetation** was deemed Not Applicable.

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**Section 6A.9, Dust, Fumes, Vapors, Odors and Gases** was deemed Not Applicable.

**Section 6B.1, Agriculture** was deemed Not Applicable.

**Section 6B.2, Air Landing Sites** was deemed Not Applicable.

**Section 6B.3, Beach Construction** was deemed Not Applicable.

**Section 6B.4, Boat Storage** was deemed Not Applicable.

**Section 6B.5, Campgrounds** was deemed Not Applicable.

**Section 6B.6, Driveway Construction** was deemed Not Applicable.

**Section 6B.7, Excavation** was deemed Not Applicable.

**Section 6B.8, Fences and Walls** was deemed Not Applicable.

**Section 6B.9, Individual Private Campsites** was deemed Not Applicable.

**Section 6B.10, Home Occupations and Home Offices** was deemed Not Applicable.

**Section 6B.11, Lots** was deemed Complete.

**Section 6B.12, Manufactured Homes** was deemed Not Applicable.

**Section 6B.13, Mineral Extraction and Exploration** was deemed Not Applicable.

**Section 6B.14, Mobile Homes (temporary), Campers, Trailers, and Recreational Vehicles**  
was deemed Not Applicable.

**Section 6B.15, Sanitary Standards** was deemed Complete.

**Section 6B.16, Sign Regulations** was deemed Not Applicable.

**Section 6B.17, Vehicles, Unregistered** was deemed Not Applicable.

**Section 6.18, Wireless Communication Facilities** was deemed Not Applicable.

**Section 6B.19, Animal Husbandry 2 in the Village Commercial and Shoreland Commercial Districts** was deemed Not Applicable.

1            **Shoreland Zoning Standards** was deemed Not Applicable; the property is outside the  
2 Shoreland Zone.

3  
4 MOTION APPROVED 3-0-2 (ASHMORE AND ANASTASIA IN ABSTENTION).

5  
6 **IV. Other – Continuation from March 13, 2019 Planning Board Meeting**  
7 **Workshop: Re: Harold MacQuinn, Inc./Fresh Water Stone & Brickwork, Inc. Quarry**  
8 **License Application**

9  
10 Attorney Collier reported he compiled a timeline of events with the assistance of the CEO  
11 and forwarded them along to Attorney Pileggi and Attorney Bearor for comment. Attorney  
12 Collier did not include suggestions made by Attorneys Pileggi or Bearor in the timeline.

13  
14 Attorney Collier drafted an Affidavit and forwarded it to Mr. Pileggi and Mr. Bearor for  
15 review. The wording is from the MMA website.

16  
17 Chairman Hanley made clear that this meeting was to focus on the process of getting new  
18 Board Members up to speed on the previous meetings regarding the quarry in a way that's  
19 amenable to all parties.

20  
21 It was noted Attorney Bearor was not in attendance. Attorney Katie Foster was at the  
22 meeting in Mr. Bearor's stead.

23  
24 Attorney Pileggi cautioned new Board Members not to rely too heavily on the timeline  
25 created by Attorney Collier, but to study the many materials available on the meetings.  
26 Attorney Collier noted decisions made by the Board were not included in his timeline.

27  
28 Mr. Ashmore felt he would like to see decisions made by the Board included in the timeline.

29  
30 Ms. Eaton noted she'd spent 14 hours so far reading the Minutes, lawsuit documents,  
31 quarry ordinance, and an additional 11 hours listening to Meeting recordings. When  
32 listening to the recordings, Ms. Eaton reviewed and cross-referenced the notes she took  
33 while reading. She focused on noise and buffering, due to those items being the two the  
34 Board will be discussing.

35  
36 It was noted that at the last meeting the Board agreed to respect the votes already taken by  
37 the Board and to continue the review of the application from the point at which it had left  
38 off, with the issues of noise and buffers the last of the issues to discuss and vote on.

39  
40 Attorney Foster noted that her office has a summary of Motions made, cut and pasted in list  
41 form from the Minutes. She agreed to share it with the others. Ms. Foster noted that there  
42 were times during the discussions that issues were revisited. Her timeline includes only the  
43 most recent votes on revisited items. Attorney Pileggi agreed issues were revisited as  
44 circumstances surrounding those issues changed.

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Attorney Collier estimated an hour to compile the timeline with Attorney Foster's document. He promised to share the results shortly thereafter.

Attorney Collier asked for clarification on how the process would work. He asked if all past standards and votes would be reviewed. Mr. Collier felt the Board could change their minds on any issue up to the point of the final vote. Chairman Hanley summarized that at the last meeting the Board had agreed to schedule three workshop meetings; a big picture discussion during the first meeting, a site visit and discussion at the second meeting, and a wrap-up at the last workshop meeting.

New Board Members reiterated that they had begun reviewing the documents and materials in earnest.

It was agreed that the issue could be discussed at the April 10 Planning Board Meeting. It was estimated the Board could be ready to review by the end of April. Scheduling was discussed.

Attorney Pileggi requested, in addition to the affidavit signed by the new members regarding their work to review the materials, that a verbal description be provided by each new Board Member summarizing for the record what they reviewed.

Attorney Pileggi noted that with regard to sound experts, the Applicant has stated there are changes to noise. Mr. Pileggi requested to be updated on these changes with as much notice as possible, so his sound expert has access to the new equipment or process affecting noise in order to attend a meeting and effectively participate.

The new Board Members have access to:

- all available meeting recordings
- Meeting Minutes
- the multitude of accessory materials submitted by attorneys and residents throughout the process
- the timeline
- the Quarry Ordinance
- the three workshops.

It was agreed that there were no additional materials or information requiring review. Chairman Hanley reiterated the site visit would be important to the new Board Members as well.

Attorney Pileggi noted that in addition to his clients, other residents of Hall Quarry have made statements, sent letters, and provided evidence to the issue, and they have a right to public process. He hoped that that part of the body of testimony would be honored and studied by the new Board Members as well.

1  
2 A discussion of the past public participation ensued. Chairman Hanley noted the public is  
3 encouraged to attend these meetings, and they have been a part of the process through  
4 each section already reviewed.

5  
6 The materials on noise already submitted were discussed. Attorney Pileggi asked whether  
7 the materials should be resubmitted. CEO Keene felt at least some of them should be  
8 resubmitted. Attorney Foster noted that Fresh Water Stone is using different operating  
9 equipment than they were during previous meetings, changing the noise. Chairman Hanley  
10 felt the Board should start from the beginning with regards to discussion of noise. Attorney  
11 Foster stated she would require knowing when submissions for discussion of noise would be  
12 due. Chairman Hanley felt that the Board would work as quickly as possible to get members  
13 up to speed on the progress made so far, and then a gap would most likely occur in the  
14 process during which the different parties could pull their submissions and experts together  
15 for presentation. Attorney Foster added that the site is currently not operating, meaning  
16 noise can't be tested there.

17  
18 Chairman Hanley noted that with Ms. Eaton's absence in the month of May, the substantive  
19 portion of the hearing may not begin until June. Attorney Pileggi suggested providing  
20 deadlines for submissions regarding noise either now or at the next workshop.

21  
22 More discussion of scheduling ensued. Thursday, April 4<sup>th</sup>, 2019 6:00 PM was confirmed as  
23 a meeting date and time. Thursday, April 18<sup>th</sup>, 2019 would be scheduled as the site visit  
24 occurring at 4:00PM. If necessary, a final meeting wrapping up the workshops could occur  
25 following the site visit, at 6:00 PM.

26  
27 MS. ANASTASIA MOVED, WITH MS. RANDOLPH SECONDING, TO HAVE A FIVE-MINUTE  
28 RECESS. MOTION APPROVED 5-0.

29  
30 The Meeting recessed for five minutes.

31  
32 Discussion regarding the status of Planning Board Member Beth Renault, who has requested  
33 to be moved back to Alternate Member status due to her conflicts with the multiple  
34 meetings this issue would require. It was discussed that perhaps Ms. Anastasia as the senior  
35 Alternate Board Member could take her place as a Regular Board Member.

36  
37 Ms. Anastasia suggested that Ms. Renault be apprised of the newly scheduled meetings to  
38 verify it is in fact a schedule she cannot participate in. If it's deemed Ms. Renault can't  
39 participate in the meetings as scheduled, then Ms. Anastasia was willing to switch roles with  
40 Ms. Renault. It was clarified that if Ms. Renault moves to an Alternate Member status, Ms.  
41 Keller will be the senior Alternate Member, should such an issue come up again.

42



1 Mr. Ashmore asked if an agreement had been reached regarding what was on the affidavit.  
2 Attorney Collier reiterated he used the MMA sample of an affidavit. It was a broad  
3 statement.

4  
5 Attorney Pileggi found the affidavit acceptable. He reiterated his request of an additional  
6 public discussion with the new Board Members in which they presented verbal evidence  
7 about what they did to research the issue, so the record was clear as to what they did and  
8 the materials they reviewed.

9  
10 Attorney Collier asked for clarification on what the new Board Members would be  
11 reviewing. He didn't feel the Appeals information was necessary. Ms. Anastasia noted the  
12 Appeals information is included in the materials for review. Ms. Eaton felt the timeline  
13 included in the Appeals materials provided a good timeline for review.

14  
15 Attorney Collier asked what the upcoming meeting dates were. Chairman Hanley reiterated  
16 the agreed-up dates and times.

17  
18 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO CONTINUE THE MEETING TO  
19 APRIL 4<sup>TH</sup>, 6:00 PM. MOTION APPROVED 5-0.

20  
21 Attorney Collier asked about the details of the April 18<sup>th</sup> Meeting. Chairman Hanley  
22 reiterated that April 18<sup>th</sup> was a site visit at 4:00 PM, followed by a meeting at the Town  
23 Offices at 6:00 PM. Deadlines for submission dates would be decided on April 18<sup>th</sup>.

24  
25 Attorney Foster inquired how the noise standards will be reviewed. If a third-party expert is  
26 required to review noise, the quarry is not currently operating, making it difficult to measure  
27 noise there. Attorney Collier felt that first the Board would need to know what the  
28 Applicant plans to submit. Attorney Foster stated that the Applicant plans to submit a  
29 report providing details on the new equipment to be used and updates and changes. She  
30 would like to know how the new equipment will be measured for purposes of sound.  
31 Previously, there were noise studies done at the site, and there was some question as to the  
32 accuracy of the noise studies done at the site. If a third-party expert is required to  
33 determine noise at the site, then the equipment must be on site, up and running. That will  
34 take time.

35  
36 Chairman Hanley felt that it would become apparent what the Board will need as the  
37 meetings progress, and it will be clear when the progress needs to pause in order to get the  
38 appropriate tools and experts on hand to move forward.

39  
40 Fresh Water Stone confirmed their new equipment was on hand, and another piece of  
41 equipment was on order. The new equipment was not currently on site.

42  
43 Attorney Pileggi suggested a protocol for the expert and testing be set up.  
44

- 1       **V.       Adjournment**
- 2           MS. EATON MOVED, WITH MR. ASHMORE SECONDING, AT ADJOURN THE MEETING.
- 3           MOTION APPROVED 5-0.
- 4
- 5           The meeting adjourned at 8:00 PM.