

**Town of Mount Desert Planning Board  
Planning Board Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, April 4, 2019**

**Public Present:**

H. Scott Stevens, Attorney for the Planning Board Eileen McGlinchey Fahey, Attorney for the Applicant Katie Foster, Janet Leston Clifford, Maureen McGuire, Laurie Shencavitz, Gerald Shencavitz, Jan Coates, Freshwater Stone representatives Andy Odeen and Jeff Gammel, Kelly O'Neil, Joanna Krasinski, Steve Krasinski, Attorney for the Shencavitz' and Aylen's Daniel Pileggi, Elizabeth S. Roberts, Pamela Bowie

**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 6:01PM. Board members present were noted. It was noted that Board Member Christie Anastasia was approved by the Board of Selectmen to become a full-time Planning Board Member, in place of Beth Renault, who has transitioned to an Alternate Board Member position.

**II. Other – Continuation from March 27, 2019**

***Workshop: Re: Harold MacQuinn, Inc./Fresh Water Stone & Brickwork, Inc. Quarry License Application.***

Chairman Hanley summarized the intent of this workshop meeting: to discuss the timeframe and decisions to be made regarding the process going forward. Chairman Hanley inquired where the timeline document promised by Attorney Collier at the last meeting was. The timeline and the affidavit had been forwarded to CEO Keene earlier in the day.

CEO Keene explained the timeline was not shared with the Planning Board because Attorney Pileggi voiced concern over providing a timeline that the new Board Members might rely too heavily on in their review of quarry materials. CEO Keene was unsure whether to distribute the document while an attorney opposed it. Attorney Pileggi opined that he had no say in what the Board's attorney shares with them. He reiterated that a summary timeline that may have items picked and chosen for the Board's review is an inadequate substitute for reading the body of the materials submitted thus far in the process.

Attorney McGlinchey Fahey noted that the Planning Board has requested a timeline twice. She felt that no one intended the timeline to be a substitute for reviewing the body of the materials submitted thus far. Attorney Foster stated she had no issue with the timeline.

Ms. Eaton reported that she has put in 14 hours of reading various materials submitted to the Board and 17 hours listening to meeting recordings. She noted she has often repeated

1 some of her research as she's progressed, as new information has come up in her review. A  
2 timeline would have been a good aid to have during her review.

3  
4 The Board was in agreement that the timeline should be distributed.

5  
6 Chairman Hanley noted the timeline consisted of key decision points during the process, and  
7 the hearings held. The Applicant's Attorney intended to submit to Attorney Collier the  
8 exact-language Motions and votes made by the Board during the meetings. Attorney Foster  
9 confirmed the Applicant's submission had been given to Attorney Collier and he added from  
10 it what he felt was of importance to the timeline.

11  
12 Attorney Pileggi stated he had reviewed the timeline. While he had no issue with the  
13 information it contained, he felt points were included that had nothing to do with the  
14 Planning Board. The timeline starts in 2012 and includes things the Planning Board was not  
15 involved with.

16  
17 Chairman Hanley summarized for those in the public who were not in attendance at earlier  
18 meetings that the Planning Board has prioritized bringing new Planning Board members up  
19 to speed on the progress made so far before continuing the Application discussion. The  
20 point of the hearing tonight was to adequately paint the big picture of the process to date.  
21 The next meeting will be a site visit at 4pm followed by a 6pm workshop meeting dedicated  
22 to follow up to discuss any final points. Then a meeting can be scheduled to begin  
23 discussion of the final points to consider on the Application. Chairman Hanley stated this  
24 workshop meeting was not to review substantive issues regarding the Application.

25  
26 There would most likely be new submittals for the portion of the process discussing noise.  
27 Noise and Buffering were the final issues to be voted on.

28  
29 The Board would not revisit the issue of Grandfathering, as the issue was decided in court.

30  
31 Discussion ensued regarding Attorney Pileggi's request that new Board Members reiterate  
32 for the record the extent of their review of the materials submitted thus far. The affidavit  
33 was presented to the Board Members. Attorney McGlinchey Fahey noted the other  
34 Attorneys have seen the affidavit and she is not aware of any disapproval as to its contents.  
35 The Board reviewed the affidavit. It was noted that Ms. Eaton had earlier confirmed the  
36 time she's invested so far. Ms. Anastasia stated she had reviewed the information as an  
37 Alternate Member. She reviewed the Quarry Ordinance itself, spent an additional four  
38 hours reviewing the materials accumulated during the meetings, and she listened to all the  
39 meeting recordings available. She read through all the Meeting Minutes and the court case  
40 and is participating in the workshops.

41  
42 Attorney Pileggi stated that Completeness Review for the Quarry Application began in July  
43 of 2014. Ms. Eaton confirmed that all meeting recordings after July of 2014 were given to  
44 the new Board Members for review.

1  
2 Chairman Hanley asked if Attorney Pileggi felt the due diligence stated by the new Board  
3 Members was adequate. Mr. Pileggi appreciated the work the new Board Members were  
4 putting in.

5  
6 Abutter to the quarry, Gerald Shencavitz, pointed out all the previous discussions regarding  
7 noise and the previous decisions made. Experts were brought in to discuss noise. Given all  
8 the information previously presented, Mr. Shencavitz wondered why the issue of noise was  
9 starting at the beginning again. Ms. Eaton opined that noise was an important issue. If the  
10 Applicant has changed their operation, then it's important to hear about the change. The  
11 Quarry Ordinance was created by the Town, when the Town could simply have said quarries  
12 were not allowed. Ms. Eaton felt the Ordinance was intended to lead the Planning Board to  
13 find the best answer for all interested parties. For the good of the project, noise should be  
14 revisited in its entirety. Ms. Anastasia and Chairman Hanley concurred that any changes in  
15 operation will have to be considered as well, and it was best to start discussion of noise  
16 from the beginning. Ms. Randolph clarified that no decision on noise was made.

17  
18 Attorney Pileggi reminded the Planning Board that they had tasked the Applicant to hire a  
19 noise expert, and one had been chosen. Experts should be brought on board now, and the  
20 scheduling should start now. Agreements and standards of measurement protocols should  
21 be agreed upon now. Chairman Hanley felt this was the substance to be discussed at the  
22 meeting on April 18<sup>th</sup>.

23  
24 Attorney Foster stated the Applicant was not prepared to engage a third-party expert at  
25 their expense at this time. Equipment being used today is not the same equipment used  
26 when discussion about noise began. When the Board has heard the new evidence, it may  
27 be determined a third-party expert is not necessary.

28  
29 Hall Quarry Resident Janet Leston Clifford reminded the Board of the previous process that  
30 included residents not represented by attorneys. A process had been adopted at earlier  
31 meetings allowing first the Applicant's attorney to speak, then Attorney Pileggi to speak,  
32 then the residents to speak. She asserted that every time a comment is allowed by an  
33 attorney comments should also be allowed by the public. Chairman Hanley fully expects the  
34 process to be handled as it was previously.

35  
36 Ms. Leston Clifford stated the public did not have the privilege of seeing the documents  
37 submitted prior to the meetings like the attorneys do. CEO Keene and Chairman Hanley  
38 disagreed; all documents are available for public review at the Town offices as they are  
39 submitted. It was noted there is no deadline by which documents must be submitted prior  
40 to a meeting. CEO Keene reiterated the deadline schedule for posting public notice of a  
41 meeting. Abutters are notified at the time public notice is made. Workshops are not given  
42 public notice, since they are a continuation of previous meetings.

43  
44 The public is always able to review the information submitted.

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

Ms. Leston Clifford noted that the timeline passed out had been reviewed by both attorneys and the Attorneys provided feedback. She asked when during the process the public had been allowed to review and comment on the timeline. How would the public have known of the timeline? CEO Keene noted those attending previous meetings knew of the timeline. At any point they could have requested to have input. The final copy of the timeline was not received by the Town until the day of the meeting. Ms. Randolph agreed. At the last meeting the timeline was mentioned, and the attorneys requested to see it for comment. At that point had a member of the public requested the same, they would have been given the chance to see and comment on the timeline.

Ms. Leston Clifford stated that in the past there have been communication loops of internal emails going between attorneys for which the public were not privy. Ms. Randolph wondered if appointing a point person on behalf of the public would work. Mr. Ashmore noted that often the day of a meeting, or the day or two preceding a meeting, a flurry of submittals and correspondence from the public come in. He wondered if setting a deadline several days before a meeting by which time all submittals and correspondence had to be in would work. The public would know that after that deadline date all new submittals would be in and available for review. CEO Keene agreed it would make sense, however deadline requirements are not in the ordinance.

Attorney Pileggi noted that in the absence of a submittal deadline, both the Attorney for the Applicant and he have made every effort to submit materials adequately in advance of a meeting date. He affirmed his willingness to follow any deadline, formal or informal, that the Board requests. Chairman Hanley suggested a seven-day deadline prior to the meeting for all correspondence and submittals to be sent to the Town.

Ms. Randolph reiterated her suggestion of a point person for the public, who can then disseminate information received to those interested. The deadline might work, but she echoed the earlier statements that the public was concerned that emails among the attorneys were not being shared. Ms. Randolph felt that this was different from the information being sent by the Town to the attorneys. The public is required to come forward to get the information.

Attorney Foster stated there was no substantive conversation pertinent to the issue being shared via email among the attorneys. Merely a circulation of documents already available at the Town office. She worried that emails shared with the public could turn into a conversation that should be happening during the meetings. She pointed out that the Board members themselves are not on the email threads shared by the attorneys.

Chairman Hanley stated that the Board tries to be inclusive of the public. Conversation needs to remain inside the meeting forum. Members of the public are encouraged to be at the meetings to discuss the issues they are concerned about. He reiterated that a submittal deadline might be a ground rule all involved should be able to agree on.

1  
2 Mr. Ashmore did not feel a point person for the public would be effective. Full agreement  
3 by every member of the public on who should be appointed point person, and the various  
4 levels of awareness of different members of the public will most likely become problematic.  
5 The public is a wide array of people. He felt a seven-day deadline was the best the Board  
6 could do to ensure information is received and made available in a timely manner.  
7

8 Ms. Leston Clifford stated that there is an abutter not represented by Attorney Pileggi. All  
9 abutters have standing. This was another reason why attorneys should not be  
10 communicating amongst themselves and not sharing their discussion with the public.  
11

12 Attorney Pileggi disagreed. Anyone is allowed to talk to anyone about the issue, as long as  
13 that conversation is not going to the Board.  
14

15 Ms. Leston Clifford reiterated that over the years there have been communication loops the  
16 public was not aware of among the attorneys and they were happening between meetings.  
17 Attorney Pileggi stated those communications were not happening with Board Members.  
18 Ms. Leston Clifford clarified she was referring to the communications among the attorneys  
19 regarding procedure and other things. Attorney Pileggi stated that these types of  
20 conversations will still happen. Ms. Leston Clifford stated there are members of the public  
21 not represented by any of the attorneys involved who may have equal standing, have  
22 opinions, and need to know what kinds of things are being decided.  
23

24 Attorney Pileggi stated that abutter Jan Coates is able to reach him with any questions.  
25 Additionally, Attorney Pileggi is happy to share public information that has been submitted  
26 should anyone from the public contact him and request it. Further, Attorney Pileggi has  
27 found that the attorneys for the Applicant and Attorney Collier have been shown to be  
28 equally willing to share information with members of the public should they be requested to  
29 do so. However, communications between attorneys are of a mechanical nature, such as  
30 scheduling experts and how to schedule experts, and not an attempt to cut the public out of  
31 conversation about the issue. If Ms. Coates has a noise expert she wants brought in,  
32 Attorney Pileggi has no doubt she will speak up about such an inclusion. Ms. Leston Clifford  
33 stated she was advocating for equal access during the procedure.  
34

35 Discussion ensued regarding providing more detail on the Agendas and emailing Agendas in  
36 a timely manner. Mr. Ashmore noted that staying on point was a key issue. The  
37 conversation needs to stay on the issue at hand. Chairman Hanley agreed, the discussion  
38 needs to stay on target, and be pulled back on target when the subject strays.  
39

40 Chairman Hanley noted that Hall Quarry resident Kelley O'Neill's recent inquiry to the Town  
41 regarding the project. Mr. Hanley stated the Board is considering her inquiry. The Board is  
42 not dismissive of inquiries. The Board cannot respond to the public outside the Public  
43 Hearing context. Additionally, the inquiry must be relative to where the Board is in the  
44 review process.

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

Ms. O'Neill stated that during a review of a letter the Board received from the Applicant, she found information she believed was inconsistent and deceptive. This prompted her contact with the Board. She asked where she should go to discuss her concerns.

Chairman Hanley encouraged Ms. O'Neill to discuss any concern of that nature with CEO Keene. Inquiries can also be emailed to the Board Chairman. Chairman Hanley can deem where it should go from there. A question such as this would most likely be directed to Counsel and then back to the Public Hearing.

Attorney Pileggi felt that an allegation of falsified information submitted was different from the issue of staying on the point of discussion. If it is found out that an internal court ruling is based on false information, then it's incumbent on the person with proof to come forward, and incumbent on the hearing body to look into the allegation. If the allegation is proved groundless, the Board can then move on.

Chairman Hanley inquired about whether the allegation is relative to Grandfathering. Attorney Pileggi felt Grandfathering was a different issue because it's been decided in court. Allegations of misinformation relative to any review criteria should be looked into. The Board has not made any final vote on the Application, therefore past issues can be revisited. It's incumbent on the Board to hear the allegation.

Attorney Foster stated that if something submitted is deemed questionable, the allegation should be brought to the Town, to be disseminated for discussion by Attorney Collier. The Applicant must be allowed to see what others are challenging and given the chance to offer an explanation.

Attorney Pileggi noted the only thing the court decision dealt with was the dismissal of the Application due to Grandfathering. All other issues are still open to discussion. A concern of falsehood must be put on the record, even if the Board decides not to address it. Or the Board can hear the concern and decide whether it's relevant to any decisions thus far made. An allegation of falsehood must be put forth and addressed. Attorney Pileggi clarified that he did not know what this allegation consisted of.

It was deemed this workshop was not the time or place to hear such an allegation.

Chairman Hanley encouraged Ms. O'Neill to submit the materials she is concerned with to the Town.

Mr. Shencavitz informed the Board that the decision made in the courts cannot be appealed until the end of this process. But the court decision was not a "closed door". He hoped the Board would keep this in mind during their decision-making process. Attorney Pileggi stated the Planning Board is not allowed to consider such an issue during their process.

1 Ms. Anastasia noted that many issues have been discussed and some tentative decisions  
2 have been made. Nothing felt as if it had been finalized. She hoped a list of final decisions  
3 from this meeting could be summarized.

4  
5 Attorney McGlinchey Fahey noted formal votes shouldn't take place during a workshop,  
6 however a voluntary agreement made by the Board can be noted.

7  
8 The suggested agreements discussed included:  
9 - A deadline of seven calendar days prior to a meeting for all submittals to be honored by  
10 all Attorneys and members of the public.  
11 - Appropriate prior notice of meetings.  
12 - More detailed description of the issues to be discussed included on the Agendas.

13  
14 Mr. Ashmore was uncertain about the agenda descriptions. Being too specific could limit  
15 the Board in what they can discuss. Chairman Hanley suggested including just the section of  
16 the Ordinance to be discussed. Attorney McGlinchey Fahey noted that the Board has not  
17 made a final decision. Therefore, it can reconsider anything that has happened before, if  
18 deemed appropriate. She cautioned on making an agenda too specific for this reason. Ms.  
19 Randolph noted, as an example, that if the Agenda stated the Board would discuss sound,  
20 and for some reason the discussion moved to a different subject, then members of the  
21 public interested in that other subject discussed may not have attended based on the detail  
22 of the agenda. She felt the discussion was fluid and could cover any part of the Application.  
23 She would not want to prohibit discussion based on the Agenda description. CEO Keene  
24 stated the Agenda would state it was a hearing of the Completeness Review.

25  
26 The Board's consensus was that the Agenda should not include detail on the discussion to  
27 be held and was removed from the list of voluntary agreements.

28  
29 Attorneys Pileggi and Foster were in agreement with a seven-day deadline. Ms. Foster  
30 requested that if this is the agreement, that attorneys be given the same consideration of  
31 timely submittals and sharing by other parties. Attorney Pileggi felt that the public was a  
32 different situation. Typically, the public responds to the submittals provided by the  
33 attorneys, and their responses usually come in later because of that.

34  
35 CEO Keene cautioned not to set a seven-day deadline if it can't be held to. Mr. Ashmore  
36 noted that if someone submits materials a day or two prior to the meeting, then the Board  
37 has no footing to refuse to consider it.

38  
39 It was deemed such an agreement was nearly impossible to hold to and was removed from  
40 the list of Agreements.

41  
42 It was agreed that Agendas could be emailed.

43

1 Chairman Hanley asked about the affidavits. Would they be signed at the end of the  
2 workshop process? CEO Keene felt that yes, by that time the new Board Members should  
3 be considered to be up to speed and the affidavits should be in place.  
4

5 The site visit was scheduled on April 18, 2019 at 4:00 pm. The site was currently icy. The  
6 Applicants would be on hand. A question of an alternate weather date was discussed. It  
7 was decided that the 6:00 pm meeting on April 18, 2019 would occur regardless, and if a  
8 new date was required due to weather, it could be decided on then. It was decided the  
9 Applicant would have the power to cancel the site visit, due to snow, by 8:00 am the  
10 morning of April 18, 2019. It was noted that Mr. MacQuinn assumes some liability having  
11 people on the property during inclement weather.  
12

13 Chairman Hanley asked for any further public comment. There was none.  
14

15 MR. ASHMORE MOVED, WITH MS. EATON SECONDING, TO CONTINUE THE MEETING TO  
16 ARIL 18, 2019, WITH A SITE VISIT OCCURRING ON THAT DATE AT 4:00 PM, AND A REGULAR  
17 MEETING FOLLOWING AT 6:00 PM. MOTION APPROVED 5-0.  
18

19 The meeting ended at 7:30 PM.  
20