

**Town of Mount Desert Planning Board  
Regular Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, June 12, 2019**

**Public Present:**

Rick Savage, Robert Fulk, Thomas Wheatley, Thomas Savage, Carmen Sanford, Michael Tadenev, Kreg McCune, John Kelly, Blay Carr, Greg Johnston, Tom Benson, Phil Jonkel, Nicole Taliaferro, Ryan Swanson, M. Squires, Kelsea Carr-Squires

**Board Members Present:**

Joanne, Eaton, Christie Anastasia, Tracy Loftus Keller, Chairman Bill Hanley, David Ashmore

**I. Call to order 6:00 p.m.**

Chairman Hanley called the meeting to order 6:00 PM. Members present were noted.

**II. Approval of Minutes**

May 22, 2019: MR. ASHMORE MOVED, WITH MS. ANASTASIA SECONDING, APPROVAL OF THE MAY 22, 2019 MINUTES AS PRESENTED. MOTION APPROVED 5-0.

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, DESIGNATION OF TRACY LOFTUS KELLER AS A VOTING MEMBER FOR THIS MEETING. MOTION APPROVED 5-0.

**III. Kreg McCune - MDOT Signage Request**

**6B.15 Sign Regulations**

- 5. Signs Permitted: Permanent Signs: Directional.** Directional signs at intersections of two or more state roads within the Town of Mount Desert are permitted with the approval of the Board of Selectmen and the prior recommendation of the Planning Board, which shall be forwarded to the Selectmen by the applicant with their application for a directional sign.

Mr. McCune reported he lives in Seal Cove and has a pottery business. He is requesting permission to have an MDOT directional sign on the post already on site on the corner of Route 102 and the Pretty Marsh Road, near the Somesville Fire Station.

CEO Keene noted Mr. McCune was requesting the standard MDOT sign to be placed on an existing post. In this instance, the Planning Board is simply recommending approval of the sign to the Board of Selectmen.

MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING, RECOMMENDATION TO THE BOARD OF SELECTMEN THE DIRECTIONAL SIGN REQUESTED, AS PRESENTED. MOTION APPROVED 5-0.

Chairman Hanley agreed to write a letter to the Board of Selectmen noting the Board's recommendation.

1       **IV. Land Use Zoning Ordinance Section 6B.10 Lots § (2) Access** - No lot may be built upon  
2       or otherwise developed unless it has a private road or driveway for access to a public way  
3       by a valid right of way benefiting the lot (or a combination of driveway and/or one of more  
4       private roads) or by ownership of land abutting the public way. **If more than 2 lots are**  
5       **accessed by the same private road, then it must meet the Street Design and**  
6       **Construction Standards of Section 5.14 of the Subdivision Ordinance.** If no more than  
7       2 lots are accessed by the same private road or driveway, then it must meet either the said  
8       Street Design and Construction Standards or the Driveway Construction standards of  
9       Section 6B.6 of this Ordinance. A pre-existing primary access drive that serves up to 2  
10      existing lots need not meet the requirements of Section 6B.6. All lots must maintain safe  
11      access for fire, police, and emergency vehicles, as determined by the Fire Chief.

12  
13      Subdivision Ordinance **Section 6. Waiver and Modifications of this Ordinance § 6.1.1**  
14      Where the Board finds that a private road providing access to a lot or lots cannot meet the  
15      Street Design and Construction standards of Section 5.14 because (a) the application of  
16      land use restrictions would prevent the work required to bring an existing road into  
17      compliance or (b) physical conditions of the site render strict compliance impossible, then  
18      the Board may waive such standards. However, in all such cases, the Board must find  
19      that (a) the proposed plan brings the road into compliance as much as is feasible, (b) the  
20      proposed plan will provide safe access to and from the property, and (c) the proposed plan  
21      will allow for access to the site for emergency vehicles.

22  
23           **PROPERTY OWNER(S):** Rye Field Partners, LP  
24           **AGENT:** Thomas B. Wheatley, Esq.  
25           **PROPERTY LOCATION:** Off Gatehouse Road  
26           **TAX MAP:** 005 **Lot:** 009-004 **Zone(s):** Residential 2 (R2)  
27           **PURPOSE:** Land Division, off a Non-compliant Private Road.  
28           **SITE INSPECTION:** 5:30PM

29      CEO Keene reported that Rye Field Partners, LP own a parcel of land off the Gatehouse  
30      Road. They would like to divide a lot. The road they are on is private and does not meet  
31      current subdivision road standards. The Subdivision Ordinance notes the Planning  
32      Board can waive the road standard requirements, under certain circumstances.

33  
34      Ms. Eaton confirmed adequate public notice and abutters were notified.

35  
36      No conflict of interest was found.

37  
38      Ms. Loftus Keller reported on the site visit. Ms. Anastasia and Ms. Eaton were also in  
39      attendance. They walked the road to the Park Boundary indicator. They made note of  
40      the existing road.

41  
42      Ms. Eaton noted the road there has a twenty-foot right of way. The Subdivision  
43      Ordinance requires a 50-foot right of way. The Applicant is requesting a waiver of the  
44      ROW requirements. Fire Chief Mike Bender wrote a letter, submitted with the  
45      Applicant's materials, stating emergency vehicles must have at least a 16-foot road  
46      width. The 20-foot Right of Way apparently goes down the center of the road. Ms.  
47      Eaton felt knowing exactly where the ROW is located will help in determining where the  
48      extra width must come from.

1  
2 Ms. Anastasia noted the condition of the road cutting the property is a gravel-type  
3 driveway; it is not paved.  
4

5 Agent Thomas Wheatley presented a survey to the Board. He summarized the history  
6 of the parcel – the property is owned by the McIlhenny's. A parcel was split off and  
7 surveyed for subdivision. Mr. McIlhenny created a partnership and then gifted his  
8 children with inclusion in the partnership. The area is now owned by the McIlhenny  
9 children and their children. In 2004 there was an unrestricted deed on the land. Later  
10 the land was combined back into one parcel. The family would like to divide the land  
11 into three parcels and sell it. The family put the land on the market and one of the  
12 divided parcels was sold to Mr. Fulk, an abutter. Mr. Wheatley realized the division  
13 would require subdivision approval. CEO Keene informed him of the additional issue of  
14 the ROW and road requirements. Abutters, including the Savages, Acadia National  
15 Park, and Cemetery, were asked about providing the required space for the enlarged  
16 ROW, and they declined. The Fire Chief was approached about the needs for  
17 emergency vehicle access, and the Applicant was told the minimum requirement for  
18 emergency vehicle access would be sixteen feet.  
19

20 Mr. Wheatley felt that the 20-foot ROW makes the 16-foot road required for emergency  
21 vehicles possible. Such an expansion would require the agreement of the cemetery. If  
22 approval cannot be gained, then the Applicant is left selling the property as one lot.  
23

24 Chairman Hanley asked how wide the existing road was. Mr. Wheatley did not have that  
25 information. Vehicle traffic can travel the road. The Fire Chief was worried about  
26 making the turn.  
27

28 Rick Savage, a property owner in the area, noted he did not see Board Members walk  
29 the length of the road during the Site Visit. Shared access means the proposed change  
30 is already affecting three pre-existing lots – five lots if the parcel is divided into two. Mr.  
31 Savage hoped this would be taken into consideration. Mr. Savage is a trustee of the  
32 cemetery and feels he has no right to give up cemetery property for someone's capital  
33 gain. Mr. Savage felt giving up the property for the road expansion would be changing  
34 the character of the area.  
35

36 Mike Tadenev from Eaton Peabody and representing Mr. Fulk, stated that Mr. Fulk  
37 expressed support of the Applicant.  
38

39 Acadia National Park Representative John Kelly confirmed that the Park has no legal  
40 authority or ability to grant a ROW or easement on a private road. The Park is not  
41 opposed to the subdivision or waiver.  
42

43 Chairman Hanley asked for other comments from the public. There were none.  
44

45 Ms. Anastasia noted that she and others on the Board drove the length of the road  
46 during the site visit.  
47

1 Chairman Hanley asked if a 16-foot road could be achieved without having to acquire  
2 additional property from anyone? Attorney Wheatley noted the ROW is 20 feet. A 16-  
3 foot road would fit within a 20-foot ROW. An expansion will require the cemetery to  
4 change their property.

5  
6 Ms. Eaton asked if anyone present argued the point that the center of the road is the  
7 center of the ROW. It was noted the road has never been surveyed. Ms. Eaton noted  
8 the curves in the road.

9  
10 Attorney Wheatley stated the area was designed to be a subdivision at one point. CEO  
11 Keene noted a corrective deed was issued that essentially merged all the lots back  
12 together. A Family Subdivision does not require Planning Board review. The project  
13 should have gone before the Planning Board when Lot C was conveyed to Mr. Fulk in  
14 2018. The property is currently in two lots, with Lot C being the second lot, and  
15 conveyed to Mr. Fulk in 2018.

16  
17 Chairman Hanley pointed out that the survey Attorney Wheatley presented to the Board  
18 is dated 2004. CEO Keene stated there was no application for a subdivision submitted  
19 in 2004.

20  
21 Attorney Wheatley's intent was to get a waiver for the ROW first. Without the waiver, the  
22 subdivision will be impossible.

23  
24 Ms. Anastasia noted that most site visits have the areas to be considered staked out.  
25 This site was not staked out. Chairman Hanley added that in light of the 2004 survey  
26 and the tight confines, road width issues, ROW issues, a waiver request, and the  
27 uncertainty of where the center line is from which to measure the ROW, he would be  
28 inclined to require a more detailed survey of the road before the request can be  
29 considered. Further, the survey should identify, in detail, the existing road width. The  
30 Board agreed.

31  
32 Attorney Wheatley protested there was no point in doing such a survey unless the Board  
33 first agrees to a waiver. The Board stated that more information was required before a  
34 decision can be made on whether a waiver would be appropriate. Chairman Hanley  
35 noted that Ms. Eaton's point of the ROW location being completely unknown was a good  
36 one. Additionally, other property owners have commented on the existing road location  
37 and the confines of the space.

38  
39 Mr. Savage asked if his interpretation of Paragraph One in Section 6B.10.2 of the LUZO  
40 is wrong; that more than two lots would be affected by this proposal. He reiterated that  
41 there are up to five lots accessed by the road and they will be affected by the proposal.  
42 Mr. Ashmore felt that there is a provision for a waiver, and if the Applicant meets the  
43 requirements, then it should be considered.

44  
45 Mr. Kelly opined that the 20-foot ROW is existing. Where exactly it is, is secondary to  
46 the fact that it exists and the 16-foot road will fit within the 20-foot ROW. Mr. Ashmore  
47 felt that there was a question to be determined regarding whether a widened road, and

1 all the shoulder work required can be done within the area. Ms. Eaton noted the slope  
2 on some of the curves would also affect the decision. Ms. Anastasia added that there  
3 may be abutting lands disproportionately impacted depending on where the center line is  
4 found to be. Mr. Ashmore asked that if the Board can't determine where the ROW is,  
5 how can they determine the 16-foot wide road can be built within it?  
6

7 It was noted there is a 20-foot metes and bounds description available.  
8

9 Additionally, there could be some engineering requirements that would take the road out  
10 of the 20-foot ROW area. Particularly, the first sharp corner could require some  
11 retaining that could take it outside the 20-foot ROW area.  
12

13 Attorney Wheatley reported he had been unsuccessful in retaining an engineering firm to  
14 assess the area. Engineer Tim Brochu created the 2004 survey but was too busy to  
15 make a further assessment of the area.  
16

17 Ms. Eaton felt the Applicant's alternatives were to either combine the lot and sell it or  
18 invest in compiling more information on the road. Attorney Wheatley protested spending  
19 money to research the road without assurance the Board would grant a waiver.  
20 Chairman Hanley stated it was the burden of the Applicant to provide enough  
21 information for an informed decision.  
22

23 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO TABLE THE ISSUE,  
24 UNTIL SUCH TIME AS THE BOARD RECEIVES MORE INFORMATION REGARDING  
25 THE ROAD AND THE ROW, OR UNTIL THE REQUEST IS WITHDRAWN. MOTION  
26 APPROVED 5-0.  
27

28 **V. Conditional Use Approval Application(s):**  
29

30 **A. Conditional Use Approval Application #005-2019**

31 **OWNER(S):** Deep Cove Holdings II, LLC

32 **AGENT:** Greg Johnston of G.F. Johnston & Associates

33 **LOCATION:** 685 Indian Point Road, Mount Desert

34 **TAX MAP:** 012 **LOT:** 005 **ZONE(S):** Shoreland Residential 3 (SR3)

35 **PURPOSE:** Section 6B.8 Fences and walls, exceeding CEO Authority.

36 **SITE INSPECTION:** 4:45PM  
37

38 **B. Conditional Use Approval Application #006-2019**

39 **OWNER(S):** Deep Cove Holdings, LLC

40 **AGENT:** Greg Johnston of G.F. Johnston & Associates

41 **LOCATION:** Off Indian Point Road, Mount Desert

42 **TAX MAP:** 012 **LOT:** 007 **ZONE(S):** Rural Woodland 3 (RW3)

43 **PURPOSE:** Section 6B.8 Fences and walls, exceeding CEO Authority.

44 **SITE INSPECTION:** 5:00PM  
45

46 Ms. Eaton confirmed adequate public notice and abutters were notified.  
47

It was noted there were two different Applications for three different fences.

1  
2 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO REVIEW ITEMS V.A  
3 AND V.B TOGETHER. MOTION APPROVED 5-0.  
4

5 Ms. Anastasia reported on the Site Inspection. Lot 5, the western one, has two  
6 proposed fences. One fence is already existing, built without realizing it exceeded the  
7 CEO's authority. Both fences are similar – wood, solid, painted dark green. One is on  
8 the edge of what is now a parking lot near the service road, the second shields the trash  
9 and recycling area. Neither fence is readily visible from the road. Lot 7 will be a chain  
10 link fence with PVC sliders. It will be 120 feet long with a gate, fencing an area  
11 dedicated to storage. The Lot 7 fence will be eight feet tall, the others will be seven feet  
12 tall.  
13

14 Greg Johnston reported the fences on Lot 5 will be on slabs. The fences will be a  
15 distance from the road, and the Lot 5 fences are green to make them harder to see from  
16 the road. The closest fence is 80 to 100 feet away from Indian Point Road. The fence  
17 on Lot 7 will not have a slab.  
18

19 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, TO FIND THE  
20 APPLICATION COMPLETE. MOTION APPROVED 5-0.  
21

22 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING TO APPROVE THE  
23 APPLICATIONS.  
24

25 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, TO USE THE SHORT  
26 FORM. MOTION APPROVED 5-0.  
27

28 A review was made of the Checklists and is attached to these Minutes.  
29

30 MOTION TO APPROVE THE APPLICATIONS WAS APPROVED 5-0.  
31

## 32 VI.7. SALE OF APPROVED SUBDIVISION AND/OR LOTS 33

34 **7.1 For Development by New Owner** No subdivision approval granted by the Board  
35 after October 1, 1988 may be transferred to another developer or subdivider  
36 without the prior approval of the Board. Any developer or subdivider wishing to  
37 acquire the development rights to a property to which a subdivision approval has  
38 already been granted must first demonstrate to the Board that he is properly  
39 qualified both technically and financially to complete the project. To that end, any  
40 acquiring subdivider must provide the Board with all of the information set forth in  
41 Section 4.2.1 plus such other data as the Board may request.  
42

43 **Elaho Subdivision** (File 36 No. 177) off Indian Point Road. Tax Map 011  
44 Lot(s) 094-001-001-094-001-009.

45 CEO Keene reported the nine-lot subdivision in question was approved by the Board in  
46 2007. The subdivision was recorded, but never developed. The owners would like to  
47 sell the subdivision. Before they can sell, the issue must be heard before the Planning  
48 Board to determine that the buyer has the financial capacity to complete the project, i.e.

1 install the road way and the utilities. Additionally, the Board must review Section 4.2.1 of  
2 the Subdivision Ordinance. CEO Keene referred the Board to the packet of information  
3 submitted by Greg Johnston, and a letter from Bar Harbor Banking and Trust affirming  
4 the Buyer's ability to fulfill the subdivision's requirements for completion.  
5

6 Mr. Johnston reiterated that the Planning Board must determine whether the evidence  
7 shows that the buyer has the financial and technical capacity to complete the subdivision  
8 road. Mr. Johnston noted the road was partially completed. A house, not part of the  
9 subdivision, currently exists in the area. Mr. Johnston added there are several DEP  
10 permits attached to the subdivision. Mr. Johnston has met with both the Army Corps of  
11 Engineers and the DEP and they have determined the permits are still valid due to the  
12 road being started. The permits can be transferred to the new owner.  
13

14 Chairman Hanley asked for public comment. There was none.  
15

16 A review of Section 4.2.1 was made.  
17

18 MR. ASHMORE MOVED, WITH MS. EATON SECONDING, THE STANDARDS OF  
19 SECTION 4.2.1 HAVE BEEN MET. MOTION APPROVED 5-0.  
20

21 A review of Section 7.1 was made. The letter from Bar Harbor Bank and Trust asserts  
22 the buyer's financial ability to complete the subdivision. It was noted the buyer had  
23 retained a professional engineer to coordinate the work, therefore the technical ability to  
24 complete the subdivision can also be confirmed.  
25

26 MS. EATON MOVED, WITH MS. LOFTUS KELLER SECONDING, THE STANDARDS  
27 OF SECTION 7.1 HAVE BEEN MET. MOTION APPROVED 5-0.  
28

29 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, APPROVAL OF THE  
30 APPLICATION FOR THE TRANSFER OF DEVELOPMENT RIGHTS FOR THE ELAHO  
31 SUBDIVISION APPROVED IN 2007 TO THE APPLICANT. MOTION APPROVED 5-0.  
32

33 **VII. Subdivision Approval Application(s):**  
34

35 **Completeness Review:**  
36

- 37 **A. Subdivision Application #001-2019**  
38 **OWNER(S) NAME(S):** Carmen A. Sanford  
39 **AGENT:** Tom Benson, T.W. Benson Land Surveying, Inc.  
40 **LOCATION:** 13 Cider Ridge Road, Mount Desert  
41 **TAX MAP:** 010 **LOT(S):** 011 **ZONE(S):** Rural Woodland 2 (RW2)  
42 **PURPOSE:** Divide lot from previously approved subdivision – Blaine W.  
43 Haynes *et als.* (File 13 Number 76).  
44

45 Ms. Eaton noted she was not in attendance for the first part of the Subdivision Approval  
46 Application process. It was confirmed Ms. Eaton would not be a participant in the

1 Completeness Review. It was confirmed Ms. Eaton's absence would not affect the  
2 quorum.

3  
4 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, TO DISMISS MS.  
5 EATON FROM THE REVIEW. MOTION APPROVED 5-0.

6  
7 Ms. Eaton left the meeting.

8  
9 Agent Tom Benson submitted to the Board an updated Plan. Improvements on Lots 1  
10 and 2 were added to the Plan, and the driveway crossing Lot 3 has been added. This  
11 driveway will be a Right of Way to Lot 2. Mr. Benson noted there is a 15-foot septic  
12 easement granted to Lot 1. The septic area is shown on the plan. A small amount of  
13 the fill goes into the easement area. Wetlands, buildings and infrastructure, wells and  
14 test pits have been added to the plan.

15  
16 It was noted public notice was not necessary at this time.

17  
18 A review of the Subdivision Ordinance for completeness was made:

19  
20 **Section 4.2.1, Information on the Applicant**

21 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND  
22 SECTION 4.2.1 COMPLETE. MOTION APPROVED 4-0.

23  
24 **Section 4.2.2, Information on Parcel to be Subdivided**

25 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND  
26 SECTION 4.2.2 COMPLETE. MOTION APPROVED 4-0.

27  
28 **Section 4.2.3, Information on Subdivision**

29 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND  
30 SECTION 4.2.3 COMPLETE. MOTION APPROVED 4-0.

31  
32 **Section 5, General Requirements**

33 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND  
34 SECTION 5 COMPLETE. MOTION APPROVED 4-0.

35  
36 **Section 6 A and B, Standards for Uses Permits and Approvals**

37 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING TO FIND  
38 SECTION 6 COMPLETE. MOTION APPROVED 4-0.

39  
40 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, THAT SECTION  
41 6C WAS NOT APPLICABLE; THE PROPERTY WAS OUTSIDE THE SHORELAND  
42 ZONE. MOTION APPROVED 4-0.

43  
44 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND THE  
45 APPLICATION COMPLETE, CONTINGENT UPON SHOWING THE LOT 1 WELL ON  
46 THE PLAN. MOTION APPROVED 4-0.  
47



1 MR. ASHMORE MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND THE  
2 APPLICATION IS COMPLIANT WITH SECTIONS 4.2.1, 4.2.2, 4.2.3 AND SECTION 5  
3 OF THE SUBDIVISION ORDINANCE AND SECTIONS 6A, B, AND C OF THE LAND  
4 USE ORDINANCE. MOTION APPROVED 4-0.

5

6 **V. Adjournment**

7 MS. ANASTASIA MOVED, WITH MS. LOFTUS KELLER SECONDING, TO ADJOURN.  
8 MOTION APPROVED 4-0.

9

10 The Meeting adjourned at 7:48PM.

11