

**Town of Mount Desert Planning Board  
Regular Meeting Minutes  
Meeting Room, Town Hall  
6:00 PM, July 17, 2019**

**Public Present:**

Jane Lee Vris, Peter Ayles, Judy Ayles, Attorneys for the Applicant Katie Foster and Ed Bearor, Janet Leston Clifford, Maureen McQuire, H. Scott Stevens, Seth Singleton, Kelly O'Neil, Janet Ellis, Jean Travers, Freshwater Stone Representatives Andy Odeen and Jeff Gammelin, Elizabeth Roberts, Howard Colter, Nancy Colter, Stephanie Clement, Attorney for the Aylens' and Shecavitz' Daniel A. Pileggi, Tobie Bernstein, **Jeff Dlueter**, M. Christine Breedlove, Ellen Brawley, C. H. Breedlove, Laurie Shencavitz, Gerald Shencavitz, Pan Bowie, W. Keith Bowie, Larry Goldfarb, Sidney Graves, Jan Coates, Maya Sorland, Joanna Krasinski, John T. Kelly

**Board Members Present:**

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

- I. **Call to Order:** Chairman Hanley called the meeting to order at 6:04PM. Board Members present were noted.

Continuation of meeting from June 4, 2019

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 and Salsbury, Inc.

**LEGAL REPRESENTATION:** Edmond J. Bearor, Rudman Winchell

**LOCATION:** Off Crane Road, Hall Quarry

**TAX MAP:** 007      **LOT:** 075      **ZONE(S):** Residential 1 (R1)

**PURPOSE:** Quarry License Application – Section 6.2 Performance Standards for Existing Quarries – F. Buffering and Screening

Attorney Ed Bearor noted that larger versions of the maps previously presented were made available prior to the meeting. Additional information as requested by the Board was added to the maps. Attorney Bearor reiterated the Applicant's position that while the Quarrying Licensing Ordinance requires a 50-foot setback from any property line, the Applicant is requesting a 25-foot setback, due to overburden being removed from the area up to 25 feet. The Ordinance entitles the Applicant to go to the point overburden has been removed. Attorney Bearor pointed out that in some places overburden has been removed even closer than 25 feet, however the Applicant has

1 decided to limit themselves to 25 feet. The aerial photo presented to the Board was the best aerial  
2 the Applicant could find nearest the date of adoption of the Quarrying Licensing Ordinance. The  
3 aerial photo used is dated April 2014. Plans from Herrick and Salsbury were also included in the  
4 submittal.

5  
6 Attorney for the Shencavitz' and Ayley's Daniel Pileggi stated that the Applicant's submittals indicate  
7 an active extraction area the Applicant is contending encroaches on abutting neighbor's properties.  
8 This area encompasses 2.25 acres, which is within the jurisdiction of the Maine DEP. Attorney  
9 Pileggi felt the Board should understand that the site location laws under the DEP require 100-foot  
10 setbacks. Additionally, there are specific noise regulations under the DEP rules.

11  
12 Attorney Pileggi continued, noting overburden was not removed during any time that Harold  
13 MacQuinn Inc. owned the property. The site has been untouched in over 30 years. Section 6.2.F.2  
14 requires the setback to be 50 feet and it should not be encroached upon.

15  
16 Hall Quarry Resident Janet Leston Clifford reminded the Board that the Applicant has the burden of  
17 proof. A June 6, 2019 submission from the Applicant shows an email from the DEP stating that the  
18 DEP would not change their original determination that the quarry is 1.1 acre in size, as determined  
19 in 2015. The DEP made this decision based solely on the Applicant's statements. These statements  
20 include reporting that there have been no changes since 2015, operations have not expanded  
21 beyond the 1.1 acre, and that they do not intend to expand.

22  
23 Ms. Leston Clifford pointed out that Freshwater Stone representative Jeff Gammelin stated at the  
24 last site visit that he did not know where the 1.1 acre was. The Quarrying Licensing Ordinance  
25 requires that the footprint of the quarry be physically staked on the ground, and it is not. Attorney  
26 Pileggi has reminded the Board that the original plan submitted by the Applicant to the DEP had 50-  
27 foot setbacks. The Applicant is now requesting 25-foot setbacks and therefore is changing the 1.1  
28 acre. The DEP declined to answer the question of the setback distances used on the plans  
29 submitted to them by the Applicant, stating it was up to the Planning Board to determine.

30  
31 Ms. Leston Clifford stated that the Planning Board owes it to the Town and abutters to require the  
32 area be marked on the ground, so the Town and abutters know where the area is. She asked how  
33 future inspections could be made by the CEO if the area is not marked out.

34  
35 Hall Quarry Resident Betsy Roberts noted that the Quarrying Licensing Ordinance is about more  
36 than just the rights of pre-existing operations. The Ordinance includes statements regarding  
37 protection of things like public health, public safety, general welfare, surface water quality, ground  
38 water quality, surface and ground water for the future, minimizing adverse impact to the Town,  
39 minimizing adverse impact to the abutting property owners, minimizing adverse impact to the  
40 citizens of the Town, minimizing adverse impact to wildlife, natural resources (including ambient  
41 soundscape), preserving the Town's natural resources, preserving the Town's property values,  
42 preserving the Town's future assets, preserving property values of residents, and controlling the  
43 amount of pollution.

44

1 Hall Quarry resident Pam Bowie stated she and her husband submitted a letter to the Board on July  
2 3, 2019. She echoed Ms. Roberts' statements. They have lived in Hall Quarry since 2011. She  
3 hoped the Board would keep in mind that Hall Quarry is a residential area. The property values of  
4 the Hall Quarry residences also warrant concern.

5  
6 Chairman Hanley asked for other introductory statements. There were none.

7  
8 Chairman Hanley read the section of the Quarrying Licensing Ordinance (Section 6.2.F.2) the Board  
9 is currently considering:

10  
11 *"Quarrying operations shall not be permitted within fifty (50) feet, horizontal distance, of any*  
12 *property line without written permission of the owner of such adjacent property. Any existing*  
13 *operation which is located less than fifty feet from the property line shall not be located any closer*  
14 *than the existing location without written permission from the adjacent property owner."*

15  
16 Attorney for the Planning Board James Collier recollected that at the Board requested additional  
17 detail at the last meeting. Mr. Ashmore requested an aerial photo taken as close to the date of the  
18 Quarrying Licensing Ordinance's acceptance as could be found, and he'd like to have the Applicant  
19 provide an explanation as to what was submitted. Chairman Hanley added that the Board  
20 requested an aerial photograph with the site plan overlaid.

21  
22 Attorney for the Applicant Katie Foster presented the aerial photo/plan overlay, explaining that the  
23 yellow line represents the entire property boundary. The dashed line represents the one-acre active  
24 quarry site.

25  
26 Attorney Collier asked where the site stood as of the date the Quarrying Licensing Ordinance went  
27 into effect, that date being December 2013.

28  
29 The photo was the closest to the date of the Quarrying Licensing Ordinance's effective date as could  
30 be found. The aerial photograph was dated April 2014, and it was a photo previously submitted to  
31 the Planning Board.

32  
33 Attorney Foster pointed out where the stockpiles were located.

34  
35 After some discussion, it was confirmed the aerial photograph was dated and the date was on the  
36 submitted document.

37  
38 Attorney Collier requested an affidavit from Mr. Salsbury noting his process for creating the  
39 documents. Attorney Bearor acquiesced.

40  
41 Attorney Foster pointed out the black dotted line denoting the one-acre boundary line, within which  
42 the Applicant plans to work for the five-year term for which they are seeking a permit. She pointed  
43 out the 25-foot setback area on the plan. She noted the rest of the property the Applicant owns

1 that does not require a notice of intent to comply at this stage. She again pointed out the property  
2 boundary as well as the access roads.

3  
4 Ms. Randolph inquired about the five-year term. Attorney Foster stated that the Quarrying  
5 Licensing Ordinance has a five-year renewal policy. In five years, the Applicant must come before  
6 the Board for renewal.

7  
8 Mr. Ashmore inquired how the one-acre area's configuration was determined. The Applicant's  
9 attorneys were not aware of how the area was chosen. Attorney Bearor said the 25-foot setback  
10 was denoted by the straight line along the boundary line.

11  
12 Attorney Bearor stated the DEP measures the acre as the quarry area, not inclusive of stockpile area.  
13 Attorney Foster added that the DEP also excludes from the calculation the area that was active  
14 extraction area prior to January 1, 1970, regardless of who owned it or the transfer of ownership.

15  
16 Attorney Collier asked for details on the active dig as of December 2013.

17  
18 Freshwater Stone Representative Jeff Gammelin did not recall if Freshwater Stone was working in  
19 the area in December 2013. Attorney Collier clarified he was looking for confirmation of the active  
20 extraction area – the hole in the ground, including side slopes, adjoining areas with overburden  
21 removed, excluding roads, structures, stockpiles, etc. which is being worked to produce stone  
22 and/or that is yet to be reclaimed. Mr. Gammelin could not remember what dates his operation  
23 was in the quarry.

24  
25 Attorney Bearor asked if Mr. Gammelin had extracted anything from the site or altered the site  
26 between December 2013 and April 2014. Mr. Gammelin stated he had not.

27  
28 Attorney Foster stated the Active Extraction area is delineated on the Plan. The area on the plan is  
29 where the Applicant is asking to quarry for the next five years, as defined by the Quarrying Licensing  
30 Ordinance. Ms. Foster showed the outlined area that defines the Active Extraction Area.

31  
32 Attorney Collier pointed out that the area is near the boundary line. Attorney Foster agreed; it  
33 shows the Active Extraction Area over the setback line where the Applicant states overburden was  
34 removed. The Applicant is agreeing to a 25-foot setback area despite the Active Extraction Area  
35 being closer to the property line than 25 feet.

36  
37 Mr. Shencavitz reported that the Applicant continued to go in and out of the quarry after the  
38 moratorium. Multiple calls were made in an effort to stop their action.

39  
40 Attorney Pileggi reminded the Board the Applicant has stated that the only and last work within the  
41 50-foot setback area was work done in the 1980s, before Harold MacQuinn Inc. owned the property.  
42 Evidence supports that the area has been dormant since that time, including the years Harold  
43 MacQuinn Inc. has owned the property. Pictures submitted bear out that fact. In looking at the

1 2014 submission, tree growth can be seen in the setback area. This is not consistent with the idea  
2 that the area has been worked.

3  
4 Ms. Leston Clifford remembered that at the June 4, 2019 Planning Board Meeting Board Member  
5 Randolph asked what would be counted or not counted as active extraction. The newly presented  
6 map shows a 2.25-acre active extraction area, some of which extends over abutting property lines.  
7 Board Member Ashmore noted that the active extraction area would be deemed area being worked  
8 as of the date of the adoption of the Quarrying Licensing Ordinance. Ms. Leston Clifford read the  
9 definition of "Inactive" from the Quarrying Licensing Ordinance: "*Quarrying that has ceased for*  
10 *twelve (12) consecutive months prior to the passage of this ordinance, in any areas where quarrying*  
11 *activity had previously occurred.*" The Applicant wants the Planning Board to accept that  
12 overburden removed in the 1970s counts as active extraction. The area in question has lain  
13 dormant and therefore, should be deemed inactive per the definition.

14  
15 Additionally, Ms. Leston Clifford asked how the 2.25 acres noted as active extraction area in the  
16 Application match up with the 1.1 acre area discussed with the DEP. She pointed out that the  
17 Applicant is unable to explain how the 1.1 acre had been calculated.

18  
19 Attorney Bearor stated that the area shown as the Active Extraction Area on the survey presented to  
20 the Board is 1.1 acres. It includes everything necessary to meet the DEP's definition of quarry and  
21 nothing more.

22  
23 Ms. Leston Clifford asked if the DEP definition of quarrying could be read. Attorney Ed Bearor stated  
24 that reading the DEP's definition of quarrying was not applicable to the discussion. Mr. Bearor  
25 reminded the Board that the DEP has commented repeatedly that the quarry is below DEP  
26 jurisdiction.

27  
28 Ms. Eaton noted that at the time of the lawsuit regarding the question of Grandfathering, the Town  
29 was directed by the courts to treat the area as an existing quarry. The question of whether or not  
30 the quarry was active has been decided for the Board.

31  
32 Attorney Pileggi pointed out the difference between litigation over an Applicant's standing to  
33 present an application to the Board, and the perimeter of the quarry area in which the Planning  
34 Board has jurisdiction. The court action never discussed the perimeter, geographically, of what's  
35 active and what's inactive. The court did not invalidate any of the provisions of the Quarrying  
36 Licensing Ordinance, including the definition of "inactive" that Ms. Leston Clifford pointed out.  
37 Nothing has been negated. The only thing determined by the court was that the Board had  
38 jurisdiction and the Applicant had standing to present a Quarry License Application.

39  
40 Attorney Pileggi pointed out SP-3, submitted to the Board, was created on July 2, 2019. The red line  
41 on that plan represents the Applicant's active quarry area. There is no connection between that red  
42 line and what was actually going on at the time of the enactment of the Quarrying Licensing  
43 Ordinance, including what may have been going on within the setback areas.

44

1 Attorney Collier mentioned that Attorney Foster stated the plan shows where the active quarry area  
2 was. He asked if there was any evidence of where the active quarry area was per the Quarrying  
3 Licensing Ordinance definition, as of December 2013. Was the area different than what Attorney  
4 Foster has presented, and how?  
5

6 Attorney Pileggi referred to a series of aerial photographs showing the areas over time that were  
7 worked. Those areas are included on Submittal SP-3. One of those areas does encroach on the 50-  
8 foot setback on one corner of Mr. Coates' property. Attorney Pileggi agrees that where that  
9 encroachment is, the Applicant has a right to stay. Otherwise, the only evidence the Board has of  
10 any activity within the 50-foot setback is Mr. MacQuinn's statements that clearing occurred in the  
11 1980s, prior to Harold MacQuinn Inc. owning the property. Further, this is consistent with what the  
12 Board has seen on the ground.  
13

14 Attorney Bearor reiterated that the active extraction area is outlined in red on plan SP-3, as defined  
15 by the Quarrying Licensing Ordinance. The area indicates areas the Applicant has cleared. The  
16 Applicant cleared beyond the property line in the 1980s. It is immaterial whether the Applicant  
17 cleared the area while they owned it, or while they were leasing the land. The overburden was  
18 removed in the area. Once overburden has been removed, there is no reason to return to that area  
19 until necessary. The Quarrying Licensing Ordinance does not require that the Applicant be the one  
20 to remove the overburden. The area noted is the Applicant's active extraction area. This area has  
21 not changed through any of the iterations of the Application. Mr. Bearor felt it obvious that the  
22 clearing of the area provides proof of intent to quarry the area, and therefore was not an inactive  
23 site. The area was cleared for a quarrying operation and to maintain a quarrying operation.  
24 Quarrying is based on the market, and there are periods of time activity is not occurring. The active  
25 extraction area is on the plan and meets the definition of the Quarrying Licensing Ordinance. The  
26 Applicant has gone closer than 25 feet to the property line, however the Applicant is not requesting  
27 the Board authorize that they be allowed to continue to do so. The Applicant has limited  
28 themselves to the 25-foot area, even though the Applicant has removed overburden from areas  
29 closer.  
30

31 Chairman Hanley reiterated that the Applicant is asking the Board to authorize that they may quarry  
32 25 feet beyond the Quarrying Licensing Ordinance's 50-foot setback area requirement. Attorney  
33 Bearor agreed, stating it was part of their active extraction area. Per Section 6.2 of the Quarrying  
34 Licensing Ordinance, "*Quarrying operations shall not be permitted within fifty (50) feet, horizontal  
35 distance, of any property line without written permission of the owner of such adjacent property.  
36 Any existing operation which is located less than fifty feet from the property line shall not be located  
37 any closer than the existing location without written permission from the adjacent property owner.*"  
38 The Applicant does not intend to go any closer than what they have already cleared, nor are they  
39 going as close as they've already cleared.  
40

41 Ms. Randolph asked why the red line encroaches into a vegetated area. The plan confirms the area  
42 is well vegetated, undisturbed area. Why was this counted as active quarry area? Attorney Bearor  
43 explained that was the area where the stockpile is located. Ms. Randolph thought the Board had  
44 been told the stockpile was elsewhere on the plan. Attorney Bearor disagreed. Attorney Foster

1 clarified she referred to a general area as stockpile; she did not know exactly where the stockpile  
2 area was on the plan.

3  
4 Chairman Hanley felt that the issue at hand was whether the Board would allow the Applicant to  
5 quarry within the 50-foot setback stated in the Quarrying Licensing Ordinance.

6  
7 Ms. Leston Clifford read the court decision in October 2018. She pointed out that there is no  
8 reference to the court's analysis of determination that Mr. MacQuinn's property met any criteria for  
9 being classified as an existing operation. The court reported the Applicant applied under Section 6.1  
10 (Existing Quarrying Activities) and not 5.1 (New or Expanded Quarrying Activities). The Applicant  
11 considered themselves an existing operation. They did not apply as a new, expanded, or recurring  
12 quarry. According to the definitions of an expanded quarry one could argue that the Applicant  
13 stated they were existing but perhaps they were actually expanding, if the original application had  
14 two phases. Why was their original application under Section 6.1 in the first place?

15  
16 Attorney Pileggi reminded the Board that the Court did not give the Board leeway to make their own  
17 rules. The Board must apply the plain language of the Quarrying Licensing Ordinance to their  
18 process. The Board must follow the definition of "inactive quarry".

19  
20 Hall Quarry resident Kelly O'Neil referenced the ortho images previously presented, one dated 2008  
21 and the one used with the overlay dated 2014. She pointed out trees cut and what appears to be  
22 quarrying done outside the delineated active quarry area. She asked for an explanation of these  
23 activities. She noted the trees cut were in the area that was stated as to be the stockpile area.

24  
25 Mr. Shencavitz felt the question to consider was whether the Applicant was extracting rock. Mr.  
26 Shencavitz opined that the Applicant was picking up loose rock, and no active extraction of rock has  
27 occurred on the property since the Musetti family sold the property.

28  
29 Ms. O'Neil asked if any revegetation has been done since 2011. Attorney Bearor stated the  
30 Applicant has done no revegetation.

31  
32 Attorney Bearor hoped the Board would not revisit the issue of Grandfathering. The court has  
33 determined the area to be an existing operation. Additionally, the moratorium was directed at the  
34 Applicant because they were operating in the quarry. The Applicant has defined for the Board the  
35 area the Applicant, as construed by Quarrying Licensing Ordinance definitions, to be the active  
36 extraction area. The Applicant has removed overburden in the area and is entitled to extract from  
37 that area, by definition in the Quarrying Licensing Ordinance. The Applicant is willing to  
38 acknowledge a 25-foot setback.

39  
40 There were no further comments. Chairman Hanley closed the Public Discussion on Section 6.2.F.2.

41  
42 Attorney Collier restated that the Court has deemed the area an existing quarry. The Application  
43 requires the Applicant to submit a plan showing the active extraction area. A date must be used as a  
44 baseline to determine what the active extraction area was. The 2014 aerial photo is the closest the

1 Applicant can get to the date the Quarrying Licensing Ordinance went into effect. The neighbors  
2 have disagreed and presumably submitted evidence to support their belief. The Applicant has the  
3 burden of proof. Attorney Collier felt the Quarrying Licensing Ordinance, Section 6.2.F was clear the  
4 Applicant can't go any closer than what is determined to be the existing active extraction area.  
5

6 MS. EATON MOVED, WITH MS. ANASTASIA SECONDING, THE FINDINGS OF FACT TO BE THAT THE  
7 APPLICANT HAS PRESENTED INFORMATION PROVING THE AREA IS AN EXISTING OPERATION AND  
8 PER THE QUARRYING LICENSING ORDINANCE'S DEFINITION OF ACTIVE EXTRACTION AREA THAT  
9 INCLUDES THE HOLE IN THE GROUND, SIDE SLOPES, AND ADJOINING AREA WITH OVERBURDEN  
10 REMOVED. THE APPLICANT HAS STATED THAT THE OVERBURDEN IS STILL STOCKPILED AND HAS  
11 NOT BEEN RETURNED, AND THE PHOTOS PRESENTED CONFIRM THE LEDGE IS STILL THERE, AND THIS  
12 BRINGS THE AREA UP TO THE PROPERTY LINE. THE APPLICANT'S PRESENTATION SHOWING A 25-  
13 FOOT SETBACK FROM THE PROPERTY LINE IN THE TWO CORNER AREAS, AND THEREFORE, THE  
14 CONCLUSION OF LAW IS THAT IT MEETS THE STANDARDS OF SECTION 6.2.F.2.  
15

16 Chairman Hanley clarified for the record that voting members are Joann Eaton, David Ashmore,  
17 Meredith Randolph, Christie Anastasia and himself.  
18

19 Ms. Randolph stated that the issue boils down to whether the Board is counting area with  
20 overburden removed in the 1970s as an active part of the quarry. The area where overburden was  
21 removed by previous owners is being used and this involves waiving the Town's required setbacks.  
22 The Applicant did not move the overburden, and nothing appears to have been done there in many  
23 years.  
24

25 Ms. Eaton noted that the fact that there's a stockpile in place that has not been returned is the  
26 reason she made the Motion. The Quarrying Licensing Ordinance has a clear definition of  
27 reclamation which includes putting the loam back. The overburden in this area has not been put  
28 back.  
29

30 Ms. Randolph argued that the requirement of reclamation is in this relatively recent Quarrying  
31 Licensing Ordinance. Previously, there were no requirements to reclaim. There's no reason for  
32 anyone to reclaim the area prior to the Quarrying Licensing Ordinance requiring it. She felt it was  
33 not evidence supporting the argument.  
34

35 Mr. Ashmore had no issue with allowing the Applicant to quarry where it was apparent that  
36 quarrying had occurred. He was not convinced anything significant was ever removed in that area.  
37 He felt the area in question was inactive. Nothing has happened there for 30 years.  
38

39 Ms. Eaton referred to the pictures that show overburden removed. Ms. Randolph felt that the  
40 length of time from when the overburden was removed makes a difference. It is proof of intent.  
41 Who did it and how long ago is a factor in the decision.  
42

43 Mr. Ashmore referred to several pictures showing the area unchanged. He felt this supported his  
44 belief that the area was inactive.



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Chairman Hanley asked if there was further discussion. There was none.

MOTION DEFEATED, 1-4-1 (HANLEY, RANDOLPH, ASHMORE AND ANASTASIA OPPOSED, LOFTUS KELLER IN ABSTENTION).

Attorney Collier opined that the defeated Motion means the Board disagreed on the Findings of Fact regarding where the existing line was. The Conclusion of Law stated was based on the 25-foot setback. This section asks the Board to make a Finding of Fact regarding where the Board thinks the Applicant was in December of 2013, and if that line is within the 25-foot setback as the Applicant states, then the Standard is met. Or, if the line is further out, then the Board finds where that line is.

Chairman Hanley suggested the Board move to uphold the 50-foot setback as stated in the Quarrying Licensing Ordinance. Attorney Collier felt this would be ignoring the Quarrying Licensing Ordinance which clearly states the quarry “shall not be located any closer than the existing location”. If the quarry existed within the 50-foot setback area as of December 2013, then that’s how far the Applicant can go.

Ms. Anastasia felt the issue was ambiguous and there’s enough confusion regarding the Applicant’s intent that the Board should follow the 50-foot setback as stated in the Quarrying Licensing Ordinance. Attorney Collier allowed that the Board could find that the Applicant has not met the burden of proof.

Ms. Randolph pointed out one small corner of quarry activity over the 50-foot setback area. She felt the area showed evidence of the encroachment, and the Applicant should be allowed to continue there, otherwise the quarry is required to abide by the 50-foot setback. Chairman Hanley felt the Board would have to reference a specific dated document to support the Findings of Fact. CEO Keene suggested Exhibit SP-1.

MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, A SHORT RECESS. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

The Meeting took a short recess.

The Meeting was called back to order.

Attorney Collier reiterated the Board’s options.

Chairman Hanley felt the argument for a 25-foot setback was ambiguous. The area appears to be a line that simply exists on site and nothing more. Ms. Randolph referenced the one small area where quarrying is evident. She felt in that area the Applicant should be allowed to continue to work, otherwise the 50-foot setback requirement should be upheld.

1 Attorney Collier referred to the definition of Active Extraction Area. A Finding must be made  
2 describing the Active Extraction Area as of a specific date. Ms. Randolph felt such a finding was not  
3 necessary, if the Board does not believe the Applicant went beyond the required setback.

4  
5 MS. ANASTASIA MOVED, WITH MR. ASHMORE SECONDING, THE APPLICANT HAS SHOWN THAT THE  
6 ACTIVE EXTRACTION AREA IN TWO SMALL AREAS IS PAST THE 50-FOOT SETBACK, BUT OTHERWISE,  
7 HAS NOT SHOWN IT TO EXCEED THE 50-FOOT SETBACK THAT EXISTED ON DECEMBER 2013.  
8 THEREFORE, THE APPLICANT IS HELD TO THE 50-FOOT SETBACK, MINUS THE TWO AREAS  
9 REFERENCED IN EXHIBIT SP-1 DATED MAY 17, 2019, PROVIDED TO THE BOARD FOR THE JUNE 4,  
10 2019 MEETING. THE SPECIFIC AREAS THAT CROSS THE 50-FOOT SETBACK AREA AS DEFINED BY THE  
11 LEDGE CUT ON THE NORTH AND THE NORTHEAST SIDES SHOWN ON THE PLAN AS THE BASE OF  
12 LEDGE SAWCUT, AS REFERENCED ALSO BY PREVIOUSLY SUBMITTED PLANS DATING BACK TO SP-1,  
13 NOVEMBER 7, 2014.

14  
15 Attorney Collier cautioned the Motion must be tied to December 2013. The existing location must  
16 be as of a date. December of 2013 is the date of the Quarrying Licensing Ordinance enactment, via  
17 approval from the DEP. Attorney Collier felt it was important procedurally to tie the effective date  
18 of the Quarrying Licensing Ordinance to the Motion.

19  
20 Chairman Hanley opined that adding the Quarrying Licensing Ordinance date negates reference to  
21 the specific plans submitted. Ms. Randolph felt such an addition added confusion to the Motion.

22  
23 Attorney Collier explained that this was an exception to the setback as stated in Section 2.F.2. Any  
24 existing operation located less than 50 feet from the property line shall not be closer than the  
25 existing location. Chairman Hanley pointed out that there is no document that clearly identifies the  
26 edge. Attorney Collier agreed that this was the problem.

27  
28 Ms. Anastasia felt comfortable with her Motion. She asked if others on the Board could perhaps  
29 improve it. Ms. Randolph felt the Motion states the setback is being held to the required 50 feet,  
30 except for the areas the sawcut edge crosses the 50-foot setback. She suggested perhaps adding  
31 the wording "that existed on December 2013" since Attorney Collier is recommending it. CEO Keene  
32 noted the same dated map was provided when the Applicant submitted their application.

33  
34 Attorney Collier noted there would be many reasons for appeal. His intent is to eliminate one  
35 reason for appeal, that one being providing a date the Board is looking at for the exception of the  
36 two areas in question. This addition makes that statement that as of the date of the Application, the  
37 area was over the setback requirement in two spots.

38  
39 MOTION APPROVED 4-1-1 (EATON OPPOSED, LOFTUS KELLER IN ABSTENTION)

40  
41 Ms. Eaton stated she was opposed because she felt the Applicant did meet the requirements stated  
42 in the pertinent section of the Quarrying Licensing Ordinance.

43

1 Attorney Collier suggested a Motion of Conclusion of Law stating that the Standard has been met,  
2 with the exception of the two exceptions indicated in the Findings of Fact.

3  
4 MS. RANDOLPH MOVED, WITH MR. ASHMORE SECONDING, TO FIND THE CONCLUSION OF LAW TO  
5 BE THE STANDARD HAS BEEN MET, WITH THE EXCEPTION OF THE TWO EXCEPTIONS INDICATED IN  
6 THE FINDINGS OF FACT. MOTION APPROVED 4-1-1 (EATON OPPOSED, LOFTUS KELLER IN  
7 ABSTENTION).

8  
9 Section 6.2.F.3 was introduced for discussion. Chairman Hanley read the Section. *"All buffers must  
10 be preserved in their natural vegetative state as existed 6 months prior to an application for a new  
11 quarry, or for an expansion to an existing quarry, in the natural vegetative state that existed at time  
12 of initial licensing by the Town."*

13  
14 Attorney Pileggi stated that the plan, as submitted, contains a substantial buffering – a berm planted  
15 with trees - that does not exist now. There has been previous discussion regarding the berm.

16  
17 Attorney Collier felt the problem with the issue lies with the Code Enforcement Officer and  
18 enforcement of specific trees. The Board will need to make a finding as to the natural vegetative  
19 state as it existed six months prior to the application. Chairman Hanley inquired whether it could be  
20 referenced to a site visit. Ms. Anastasia inquired whether the reference should be to the original  
21 Application date, or a revision date.

22  
23 Ms. Randolph noted a berm and new vegetation is being planned, more significant than any  
24 vegetation that might have been in place six months prior to the Application. The berm and  
25 vegetation will be replacing original vegetation. She felt the issue was a moot point in light of the  
26 installation of a berm and vegetation.

27  
28 Attorney Collier re-read the Section. He felt on second look that the Section was Not Applicable, as  
29 the quarry was neither new, nor an expansion.

30  
31 MS. RANDOLPH MOVED, WITH MS. ANASTASIA SECONDING, THAT SECTION 6.2.F.3 IS NOT  
32 APPLICABLE. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

33  
34 Chairman Hanley introduced Section 6.2.F.4. He read the Section: *"The Planning Board may require  
35 as a condition of approval the applicant to take specific actions to insure the long-term effectiveness  
36 of any buffers or buffer yards, including, but not limited to, the planting of trees and/or shrubs,  
37 placement of solid fences or creation of berms when the natural existing vegetation does not provide  
38 a sufficient visual screen. The design of any fences, walls, berms or other structural screening shall be  
39 submitted to the Planning Board as part of the application. The owner or operator shall maintain the  
40 buffers to ensure that the continue to function in an effective manner. Dead trees and shrubs that  
41 are intrinsic to the buffer yard shall be replaced within one (1) year after they have died."*

42  
43 Attorney Collier felt the Applicant should provide a description of their plans. He asked for  
44 suggestions on how the specific actions to insure long-term effectiveness might be policed.

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Attorney Bearor noted that as presented earlier, a berm will be built and topped with a buffer of vegetation. He opined that the simplest thing for the Board to do was to let the Applicant know whether the plans presented are acceptable. The Quarrying Licensing Ordinance requires the Applicant maintain the buffer.

Attorney Collier suggested enforcement would entail the CEO inspecting the area once a year and if vegetation is dead for any reason, the Applicant will replace it. Attorney Bearor agreed. It was confirmed the plan with the berm included was dated May 17, 2019, presented at the June 2019 meeting.

MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, THAT THE PLANS FOR THE BERM BE ACCEPTED AS PRESENTED IN THE PLAN PER EXHIBIT SP-1 DATED MAY 17, 2019 AND SUBMITTED FOR THE JUNE 2019 MEETING, TO BE PLACED ANYWHERE WITHIN THE 50-FOOT SETBACK AREA, AND USING NATIVE EVERGREEN SPECIES, EXCLUDING RED PINE.

Ms. Randolph pointed out that the location of the berm will require vegetation to be cut.

Attorney Bearor noted the berm is intended to be ten to fifteen feet wide. The area the Applicant stated previously was cleared of overburden, but not approved as part of the setback. He felt the berm could perhaps be placed there.

Attorney Pileggi had no comment regarding the berm planned as visual screening.

Attorney Bearor noted the vegetation will be staggered evergreen trees spaced ten feet apart. The intent is to maintain year-round screening.

Board members agreed the vegetation needs to be native.

Ms. Randolph noted that the submittals regarding the berm does not show the berm to be where Attorney Bearor suggested it could be now that the setback requirements had been set. Attorney Bearor clarified that the Quarrying Licensing Ordinance does not dictate where the berm must be. It was agreed that if the location needs to be amended, it can be done later.

CEO Keene read that the submittal specifications for vegetation notes an equal mix of spruce, hemlock, and red pine trees.

MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, THE CONCLUSION OF LAW TO BE THE APPLICABLE STANDARDS HAVE BEEN MET, BY USE OF THE PLAN REFERENCED IN THE FINDINGS OF FACT.

MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

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Chairman Hanley introduced Section 6.2.F.5. He read the Section: *“The applicant may elect to increase the width of the natural buffer area in order to achieve an adequate visual screen.”*

Attorney Bearor noted the Applicant would not be increasing the buffer area as noted in the Section.

MS. EATON MOVED, WITH MR. ASHMORE SECONDING, SECTION 6.2.F.5 WAS NOT APPLICABLE. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

Chairman Hanley introduced Section 6.2.F.6. He read the Section: *“The visual screening requirement for the buffers is not a complete visual barrier. The screening, to be adequate, must provide a substantial year round visual barrier so that the active extraction area is not clearly, or unobstructively, visible from an abutting property or public road and by providing a continuous barrier which obstructs the view of the active extraction area by at least eighty (80) percent from all locations within one hundred fifty (150) feet from the active extraction area boundary.”*

Attorney Bearor stated that the Applicant submits that the buffer plan presented and approved by the Board meets this requirement.

Attorney Collier queried about the process in the event the planned buffering does not meet the requirement. He answered his own question, suggesting the CEO would check the area and require more trees is deemed necessary. Attorney Bearor concurred.

Attorney Bearor restated that the berm would be ten to fifteen feet in width, five feet in height, and trees five to six feet tall planted on the berm.

Hall Quarry resident Maureen Maguire asked whether the barrier would also obstruct the view of the quarry from Acadia National Park and Acadia Mountain. Attorney Bearor noted the Quarrying Licensing Ordinance stipulates the quarry must be free from unobstructed view only from abutting properties and roads. Acadia National Park is not an abutter of the quarry area. The Shencavitz property, the Ayles property, and the Coates property are abutting properties to the quarry area. The Musettis and the Mooers also abut the property, but the Applicant has received letters from them. The Quarrying Licensing Ordinance notes that, in addition to abutting properties, properties visible up to 150 feet must be free from an unobstructed view. Vegetative screening is not required to achieve a complete visual barrier to the quarry site.

Attorney Bearor reiterated that the Quarrying Licensing Ordinance states that the vegetation must only create a *“barrier which obstructs the view of the active extraction area by at least eighty (80) percent from all locations within one hundred fifty (150) feet from the active extraction area”*. Attorney Bearor suggested perhaps drawing a 150-foot perimeter line could be drawn around the area to show the area requiring a not-unobstructed view of the quarry area. The 50-foot setback area would be counted as part of 150 feet.

1 Attorney Foster noted that Submission SP-2 has a 500-foot property line offset included that might  
2 provide perspective.

3  
4 Ms. Anastasia felt the effectiveness of the barrier's obstruction of sight of the quarry would require  
5 a walk around the area once the berm is installed.

6  
7 Chairman Hanley asked the abutters to comment on their opinions on the berm. Mr. Aylen hope it  
8 would not be grassed. If the trees installed were cedar deer would eat them. Mr. Aylen and Mr.  
9 Shencavitz hoped the berm would be maintained. Mr. Shencavitz noted that the berm is not being  
10 discussed as a sound control issue, otherwise, he would voice more concern. Ms. Coates noted she  
11 did not have a problem with the berm. She noted the property on the corner is a buildable lot,  
12 therefore, maintenance and maintaining the 80% view obstruction are important.

13  
14 Attorney Collier inquired whether some sort of guarantee the Applicant would maintain the berm  
15 was required by the Board. Chairman Hanley felt it was inherent in the Quarrying Licensing  
16 Ordinance and the process.

17  
18 MS. RANDOLPH MOVED, WITH MS. EATON SECONDING, THAT THE APPLICANT HAS PROVIDED A  
19 PLAN THAT WILL ADEQUATELY ACHIEVE THE STANDARD OF SECTION 6.2.F.6. MOTION APPROVED 5-  
20 0-1 (LOFTUS KELLER IN ABSTENTION).

21  
22 Attorney Collier stated that a Conclusion of Law was that based on the Findings of Fact for Section  
23 6.2.F.6, the Standard is met.

24  
25 MS. EATON MOVED, WITH MR. ASHMORE SECONDING, THAT BASED ON THE FINDINGS OF FACT FOR  
26 SECTION 6.2.F.6, THE STANDARD IS MET. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN  
27 ABSTENTION).

28  
29 Ms. Loftus Keller inquired what will define the southern edge of the quarry area, now that the  
30 northern and eastern edges will be defined by a berm. What sort of marker will delineate the lower  
31 edge of the site?

32  
33 Attorney Bearor stated that in accordance with the Application requirements, if the Site Plan is  
34 approved, the Applicant will mark on the ground the footprint of the area. With regard to visual  
35 screening up to 150 feet, the Applicant owns the area to the south of the active quarrying area, so  
36 visual screening is not an issue on the lower end.

37  
38 Discussion of continuing the meeting ensued.

39  
40 Attorney Collier felt that prior to continuing the meeting, the Board needs to be clear on its goals for  
41 the next meeting. Submission dates must be scheduled.

42  
43 Chairman Hanley stated the Meeting needs to be continued to a date certain to discuss Section  
44 6.2.J. – Noise. There are no subsections of Section J. It was clarified that submission dates cannot

1 be set until the date of the meeting continuation is set. As previously discussed, submissions are  
2 due two weeks prior to the date set, and rebuttals to the submission are due one week prior to the  
3 date set.

4  
5 Attorney Pileggi pointed out that the section regarding Noise is an area of the Quarrying Licensing  
6 Ordinance during which the Board is likely to hear expert testimony. There is an equipment list  
7 within the application, but comments made by the Applicant suggest the equipment is changing.  
8 Because of that, Attorney Pileggi is asking the Board for additional time to respond to the  
9 Applicant's submissions. Currently, Attorney Pileggi can respond to the information in the existing  
10 application, however, if the Applicant changes their noise mitigation plan or presents new  
11 equipment, he would like as much time as he can get to allow his expert to assess the changes and  
12 offer an opinion.

13  
14 Attorney Collier disagreed with sending out a Doodle Poll to find a meeting date. CEO Keene argued  
15 that several people in the audience have left and will not know the meeting has been continued.

16  
17 Attorney Bearor did not have a list of the new equipment with him.

18  
19 Scheduling was discussed.

20  
21 August 29<sup>th</sup> was deemed the date all Board members could be in attendance.

22  
23 Attorney Collier asked if the Board would like to discuss Section 4.4. He noted past discussion was  
24 that the Board would have an expert to help them make a determination on the issue. Chairman  
25 Hanley argued that the Board needs to see what the Applicant presents before further discussion  
26 can be had. Ms. Eaton suggested another Site Visit; one with equipment on site that the Board  
27 could hear. Chairman Hanley did not feel the Board would get through the issue of Noise in a single  
28 night. A Site Visit could be included in the process. He suggested the Board set a date, review the  
29 submittals, and begin discussion that evening, with the idea that additional information or expert  
30 testimony and additional meetings may be required to be scheduled.

31  
32 It was agreed the Meeting would be continued to August 29<sup>th</sup> at 6:00 PM. Submission dates were  
33 considered.

34  
35 Ms. Leston Clifford echoed Attorney Pileggi's statements. There is nothing for the public to review  
36 other than what is in the Application. If the Applicant's methods and machinery are changing, then  
37 one week will not be enough time to review the Applicant's submittals and form a response.  
38 Attorney Collier inquired of Attorney Bearor when the information might be available.

39  
40 Attorney Bearor noted there's been a sound engineer on site making suggestions. The Applicant can  
41 have the information to the Board by August 15<sup>th</sup>.

42  
43 Attorney Pileggi noted the Aylens are leaving for Florida. The Aylens request an earlier meeting date  
44 so they can be in attendance. Additionally, whatever submission date was chosen, Attorney Pileggi

1 hoped that rebuttals could be allowed to be submitted up to two or three days prior to the meeting.  
2 The Board was in agreement to allowing those submitting rebuttals to submit Tuesday, August 27<sup>th</sup>.

3

4 Ms. Coates noted August 29<sup>th</sup> is not a good day for her for the next meeting.

5

6 It was noted that Board Members were not available until after August 28<sup>th</sup>, which was why the date  
7 was chosen.

8

9 CEO Keene repeated the confirmed dates: Meeting date is August 29, 2019, 6:00PM. Applicant  
10 submittal deadline is August 15, 2019. Rebuttal deadline is August 27, 2019.

11

12 MS. EATON MOVED, WITH MS. RANDOLPH SECONDING, TO CONTINUE THE MEETING TO AUGUST  
13 29, 2019, 6:00PM. MOTION APPROVED 5-0-1 (LOFTUS KELLER IN ABSTENTION).

14

15 The meeting ended at 8:44PM.

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