

**TOWN OF MOUNT DESERT
PLANNING BOARD MEETING
November 9, 2022**

Board Members Present: Chair William Hanley, Meredith Randolph, Tracy Loftus Keller, Gloria Kunje, David Ashmore

Members of the Public Present: David Hodgkins, Travis Noyes, Eliza Bishop, Paul Slack, William Bishop, Izaak Giberson, Todd Mydland, Abby Simpson, Rene Courtemanche

Gloria Kunje is an Alternate, non-voting member.

Member Christie Anastasia was not in attendance.

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

Chair Hanley called the Meeting to order at 6:00PM. Board Members were identified.

II. Approval of Minutes

October 26, 2022:

MS. LOFTUS KELLER MOVED, WITH MS. RANDOLPH SECONDING, APPROVAL OF THE OCTOBER 26, 2022 MINUTES AS PRESENTED.

VOTE:

TRACY LOFTUS KELLER: AYE

MEREDITH RANDOLPH: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO MAKE ALTERNATE MEMBER GLORIA KUNJE A VOTING MEMBER FOR THE MEETING.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

DAVID ASHMORE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

III. Conditional Use Approval Application(s):

Continued from October 12, 2022

A. Conditional Use Approval Application #012-2022

NAME(S): Mount Desert Water District

AGENT: Paul Slack, General Manager

LOCATION: Starting at fountain on Route 3 running down Steamboat Wharf Road to Seal Harbor Library, Seal Harbor

ZONE(S): Conservation (C), Resource Protection (RP), Shoreland One (SR1) & Shoreland Two (SR2) zoning districts.

PURPOSE: Public Utilities. Replacement of an existing 6” year-round water main line with a 10” year-round water main line.

Chair Hanley disclosed that he was not in attendance at the October 12, 2022 Planning Board Meeting at which this discussion started. He watched the recorded Zoom meeting, read the Minutes for the Meeting, and signed an affidavit to that effect.

Water District Agent Paul Slack reported that at the last meeting, the Board requested engineering drawings. Engineering drawings were submitted. The Board stated nothing further was deemed necessary for a review of the Conditional Use Application. Modifications were made to the Application, to include reference to the newly created drawings and engineering bond. A revised Conditional Use Application reflecting those modifications was submitted to the Board.

CEO Keene confirmed that Public Notice and Notice to Abutters were not necessary, because this was a continuation from the October 12, 2022 Meeting.

Chair Hanley opened the discussion to Public Comment.

Haley Ward engineer Travis Noyes, representing neighbor Todd Mydland, stated that his clients were in support of the Ringing Point project previously approved by the Planning Board. They are, however, concerned that the work being presented for approval is essentially a water main extension occurring in three separate steps. Initial approval was for the Ringing Point project, a second approval was for the span of line along the Ballantyne property recently approved, and now this section. Mr. Noyes stated there’s been no review of the impact of this water main extension as a whole. No analysis has been presented determining how the main will operate. It’s an extension of a year-round main, however seasonal mains remain in the area. There is no information on what is to happen to some of the appurtenances and features along the main.

Mr. Noyes submitted a presentation to the Board. Additionally, he made a review of both the Ringing Point project and the Ballantyne project. Because the projects appear to be three phases of a water main extension, a review should be made of the comprehensive, overall aspects of the work proposed.

Mr. Noyes noted the following concerns:

- The project before the Board proposes to install a 10-inch water main in the same trench that a six-inch diameter water main is today.

- Temporary water supply during installation should be addressed.
- Mr. Noyes contended that a 10-inch diameter HDPE pipe is not in fact 10 inches in diameter. The interior diameter for this type of pipe is closer to 8.5 inches.
- The plan indicates that one-inch services will replace existing services within the Right of Way.

The Ringing Point water line project proposed approximately 1000 feet of 10-inch ductile iron water main and the seasonal line there will remain. Mr. Noyes inquired about why the seasonal line was to remain. There will be a fire hydrant installed at the end of the line.

The Ballantyne project proposes a 90-foot water line extension beyond the Ringing Point project.

Mr. Noyes reiterated that he was concerned with the entirety of the three projects as a single system.

Additional concerns include:

- One of these projects requires 5 feet of cover over the proposed line, and one requires 4.5 feet of cover over the line, making it inconsistent.
- There's been no integrative approach to operating the system. There are seasonal mains, year-round mains and blowoffs.
- No information has been provided about how the main will be operated and maintained, or how many blowoffs will be required.
- The main will be installed in close proximity to underground electric near the fountain.
- The Ringing Point work and Water District work is proposed to be close to homes. This raises concerns regarding construction.
- Some of the main will be installed where there is currently no trench. This will likely mean ledge removal is necessary and should be anticipated.
- A number of homes in the proposed work area have been built close to both the water and the road. How will this project affect those homes?

The Ballantyne property will be at the end of this extended line. That design plan included a hand-written note indicating the blowoff. No other information was provided. Size of the blowoff, location, and how size was determined are unknown. Mr. Noyes has seen no analysis from the Water District confirming they've sized the system using industry standards. It is unknown whether this particular blowoff will be a hydrant, a pipe in the ground, or a pipe with a shutoff.

Mr. Noyes' clients have two blowoffs on properties on Steamboat Wharf Road that discharge onto their property. It's unclear why these blowoffs must remain if the project is extending the line to become a year-round main from the fountain to the Ballantyne property. Mr. Noyes does not believe they are necessary.

It's not clear the Water District has ownership or maintenance rights to the blowoffs on

his client's properties. One of those two blowoffs was installed by his client.

Another issue is that of cross-contamination of the water. An air gap system would alleviate this threat.

Regarding the Planning Board's Performance Standards, by which the Planning Board will review the Application, Mr. Noyes requested the Board review the project and his opinions on the project as they relate to the LUZO's Performance Standards. Mr. Noyes began a review of the Performance Standards included in the Conditional Use Application.

With regard to "Maintaining Safe and Healthful Conditions", no plans were presented for an interim water phase that will maintain water throughout the project. There is risk that the lines can freeze as the weather gets colder. Mr. Noyes stated that all three water main projects must be run and tested as a single unit.

With regard to "Road", paving plants will close for the winter. How will this affect the work?

With regard to "Impact on Town Services", how will this work impact Town services like traffic, electrical, and water service.

With regard to "Erosion and Sedimentation", the line runs along the water's edge; the Application includes little detail on how it will be managed.

With regard to "Excavation and Filling," there is little information on how potential erosion into Seal Harbor will be addressed.

The line is proposed to increase in size to ten inches, and there will be a greater possibility of freezing. Has thought been given to more insulation?

With regard to "Archaeological Sites", no information was submitted on archaeological sites.

Regarding "Essential Services", the water line will be in close proximity to the electrical line. There's nothing in the Application addressing how potential impact will be addressed.

Regarding "Roads and Driveways", the line runs close to private residences. No information has been provided regarding impact to private residences in the area.

What are the risks of this type of patchwork project work? Mr. Noyes looked at all three designs and their different performance characteristics. He believed there's been no review of the entirety of these lines. The Town must pause to make a full review of the three projects before moving further. The blowoffs on Mr. Noyes' client's property are not required and do not need to be there.

Mr. Slack asserted that many of Mr. Noyes' points are not within the Planning Board's jurisdiction. An appeal was filed on the Ballantyne Extension project. It was Mr. Slack's opinion that the Ballantyne project has design characteristics that satisfy the Water District. No other entity is capable of approving such designs.

Mr. Slack stated that he'd only just received Mr. Noyes' report and has not had a chance to make a review of the information.

In response to the points made by Mr. Noyes, Mr. Slack reported that:

- With regard to there being three separate projects, Mr. Slack did not understand why there couldn't be three separate projects.
- Water main operation is not the jurisdiction of the Planning Board.
- Regarding putting the new water main next to the old one, Mr. Slack clarified that the project involves a water main replacement, removing an old main and replacing it with a new.
- It's not common practice to include temporary water line plans. When the Northeast Harbor Main Street water main work was done, no plans for temporary water were included.
- Regarding 10-inch HDPE pipe versus 10-inch ductile, there are slight variations in pipe size, usually fractions of an inch, which should have no bearing on the project. There is no reason to remove the 4-inch line in place; removal will be the prerogative of the Water District.
- Regarding variations in cover over the pipe, it is typical that pipes are at different levels underground. Insulation is used to compensate for differences. This was done on the Northeast Harbor Main Street project.
- Regarding the proximity to electricity, the Northeast Harbor Main Street project is a good example of electricity lines and water lines being in close proximity.
- Regarding concerns about utilities existing on the side of the road, utilities are already there. It's a common occurrence. The electrical lines and water main are at a distance from each other. This allows the Water District to excavate, remove and replace the pipe.
- Regarding concerns about ledge removal, the project is replacing a pipe already in the ground. The Water District does not expect to find significant amounts of ledge. If ledge is found, it will be removed by mechanical means.
- Regarding blowoffs, Mr. Slack explained that blowoffs are used for various reasons, including disinfecting the main and improving the quality of the water in the main. The existing main is 75 years old. Replacing it will improve the water quality and hydrant flow capability in that area.
- The reason a ten-inch main is being used is so that in the event the line is extended further at some future date, the diameter is appropriate for such an extension.
- Regarding Mr. Noyes' comments on the blowoffs existing at his client's two properties, 13 and 19 Steamboat Wharf Road, one of those blowoffs has been there approximately 40 years. The Water District operates and maintains them.

Mr. Slack understands that Mr. Mydland does not want the blowoffs operating on his property. The Water District is trying to improve the quality of the water in his neighborhood. If the lines can be improved, it lowers the chances of using the blowoffs on Mr. Mydland's properties. However, it is possible the blowoffs might be required on occasion, such as for a break in the water main.

With the proposed improvements the fire hydrant already in place will be improved and the new fire hydrant can be installed on Cooksey Drive.

Regarding performance standards of the LUZO, Mr. Slack did not feel it was the Planning Board's job to dictate how the Water Company operates its distribution system. Additionally:

- Erosion control plans were submitted to the Planning Board.
- With regard to paving plans, cold patch or a concrete slurry can be used to patch the road, in the event the paving plants are closed by the time paving can be done. Concrete was used at the water fountain several years ago when there was a water main break with no issues. He reminded the Board the project had been brought to them in September, when there would not have been an issue with the paving plants closing.
- Letters were submitted regarding potential archaeological sites in the area.

Mr. Ballantyne requested an extension to the line, and whether seasonal or not, it should be allowed. The Water District approved the plan. It will affect neither Town services, nor the Water District. The Ringing Point project is underway. Mr. Slack confirmed that he and project engineer Greg Johnston, agent for the Ringing Point project, worked together on the designs of these projects. Pipe sizes were designed to ensure sufficient fire suppression flow to the top of Cooksey Drive. Fire suppression was the guiding force in design specifics such as line size.

In response to how this particular project would be built and how service to residents would be maintained, Mr. Slack explained that, as during the Northeast Harbor Main Street project, old water main was removed, new water main was installed, and temporary water was set up during the work to accommodate anyone needing water during the line replacement. This project intends to follow the same steps.

Mr. Noyes contended that engineers worked on the details of the Northeast Harbor Main St. project for two years prior to the project.

Mr. Noyes believed the project plan was put together quickly. Mr. Noyes worked at Woodard and Curran and there he ran models of lines and understood the system. He asserted that this project was not looked at as a water main extension. The line replacement as a whole was truncated into three different plans with three different water main sizes; 10 inches, 8.5 inches, and 4 inches. Mr. Slack contended there is no 8.5-inch portion of water main. Mr. Slack and Mr. Noyes argued whether a 10-inch HDPE line is in fact only 8.5 inches in diameter.

Mr. Noyes contended that no information was provided indicating whether the blowoffs are located and sized appropriately, or whether any blowoffs could be removed. The impact to the residential properties, particularly his client's, could be improved with a slower, more thorough, integrated approach. Mr. Noyes pointed out that Mr. Slack stated the blowoffs on Mr. Mydland's property will likely never be needed. Mr. Noyes recommended analyzing whether or not they can be removed. Analysis could be made with an integrated review.

Mr. Slack argued that it cannot be calculated how many blowoffs are needed until the main is operating.

Chair Hanley asked Mr. Noyes what his primary concerns for the project were.

Mr. Noyes stated:

- A water main extension such as this should be looked at to identify where blowoffs and hydrants should be placed.
- The blowoffs at 13 and 19 Steamboat Wharf Road are not necessary.
- Mr. Noyes asked for information from the Water District's engineers regarding where blowoffs are necessary but was told it would be determined after the project was complete.
- The Water District does not have right, title, or interest in the property along the line.
- Mr. Noyes has seen no integrated information telling what the fire flows and water pressure will be.
- There are design standards regarding sizing, but it is not clear whether those standards were looked at with regard to the blowoffs for the Ballantyne property which will be the end of the water main.
- An integrated approach, looking at the three projects from start to finish, should provide information on size, what it will look like, and where the water will go once it's reached the end.
- Based on the system created, there could be erosion or freezing issues.

Chair Hanley asked whether the blowoffs at 13 and 19 Steamboat Wharf Road could be removed. Mr. Slack stated they cannot be removed at this time; there was no reason to remove them regardless.

In response to Mr. Noyes' concerns, Mr. Slack asserted that:

- In moving from HDPE to an iron water main, the same coupling is used to connect the two. Any difference in the interior diameters is minimal.
- The blowoff lines are two inches. They are not used for flushing lines; they are used to improve water quality.
- A blowoff is an asset in the ground, and there is no way to assess their need in the future.
- The Water District uses their hydrants for flushing.
- Once the lines are in place the Water District will test the water. The only way to

know what is necessary regarding water blowoff is to test it. The only way to test the water to determine the need for a blowoff is to physically run it and test it. It cannot be done from an engineering standpoint.

Mr. Slack stated that engineers have concurred that there is no way to calculate through engineering calculations what a line will require. There are a number of variables, including what comes into the main and water quality. If the Water District does not need to run the blowoffs on Mr. Mydland's property, they will not do so. The Water District does not want to use the blowoffs and expects they won't likely be used. However, they are in place in case they are needed.

Water blowoff goes into the ocean.

It was noted that Board Member David Ashmore was not in attendance at the previous meeting when the issue was discussed. Mr. Ashmore may engage in discussion but would not be able to vote.

Chair Hanley reminded the Board that they review such an application through the Conditional Use Application process which is based on specific performance standards. The Board bases its review on the professional, stamped plans and submittals. Details such as determining which diameter pipe is right for the job is not in the Planning Board's purview.

Ms. Randolph added that the review gives neighbors an opportunity to express concerns. The Planning Board can review neighbor's concerns and to that end, the Planning Board can listen to discussion about engineering and how it relates to neighbors' concerns. Ms. Randolph believed that Mr. Noyes wants a review of the entirety of the line work in the area, so a better look is taken at where blowoffs are needed. Mr. Noyes believes an engineer can determine how many blowoffs are needed and their location. Mr. Slack's position is to leave blowoffs in place and if they are needed, then the Water District can use them.

Chair Hanley stated that the Board understood the concept of an integrated approach, however the task is to review this specific application. The Planning Board must keep from venturing beyond what has been submitted.

Ms. Randolph wondered if the blowoffs were the center of the concerns, and whether there was a way to come to an agreement on their location. Perhaps the blowoffs could be moved to another area where they can outflow directly into the ocean without crossing anyone's property.

Mr. Noyes maintained that Mr. Slack's answer to the question of whether the blowoffs could be removed was that there was no reason to do so. His client requests a straightforward yes or no answer. With regard to locating blowoffs, Mr. Noyes restated his work experience with Woodard and Curran. A review after the system is built can

indeed determine what is necessary, but it can be designed and analyzed prior to building to determine blowoff locations. Pre-construction modeling can assess the potential for problems. His client is asking for a yes or no answer to whether the blowoffs can be removed. Perhaps a third-party engineer can make the assessment.

Resident Izaak Giberson voiced concern about the cost accrued for engineering a line that's been in place for 75 years. Mr. Noyes asserted that there is available information on this line from 2008. From that information, modeling can determine seasonal use and water turnover. He estimated the cost to be no more than several thousand dollars.

Mr. Giberson stated his mother lives in this area. More work will raise her water rates.

Mr. Noyes reiterated that his clients' blowoffs are not necessary for operation.

Ms. Randolph reported that in reviewing the drawings submitted, the locations of the blowoffs could not be located. Mr. Slack maintained that the blowoffs were included on the drawings. Mr. Noyes countered that there was no clarity between what on the drawings were blowoffs and what was shutoff.

Ms. Randolph noted the drawing shows a section of the proposed line going along the water, with no property ownership there. Perhaps the blowoffs could be moved to that area. Why couldn't the blowoffs, at this point in the project, be reviewed to determine whether there's a place they can be relocated to that satisfies everyone.

Mr. Noyes believed the blowoffs could be removed completely. Mr. Slack reiterated that such a thing can't be determined with certainty until the water main can be tested.

Chair Hanley asked again; can the blowoffs at 13 and 19 Steamboat Wharf Road be removed. Mr. Slack stated they cannot; the two water main projects have not been completed. It is the Water District's belief that the blowoffs must be tested once the projects are completed. The blowoffs are Water District assets. Determining water blowoff location is outside the Board's purview.

Chair Hanley noted that the Board represents the citizens of the Town. A citizen is concerned about the Application and the Board is trying to find a happy medium to the problem.

Mr. Noyes pointed out that Mr. Slack stated that blowoffs are at the end of a dead end main. The location of the end of the main is being extended. Therefore, the blowoffs on his client's property could likely be removed. The system can be analyzed to determine whether a blowoff can be removed or not. His client wants the blowoffs on his properties removed.

Chair Hanley suggested the Board begin their review.

Ms. Randolph believed the review was going to come to a yes or no answer. A compromise or truce is required regarding the blowoff valve. There is a new blowoff going in at the end of the line. Would the new blowoff be inadequate? The new blowoff that is part of the Ringing Point project will likely be in place before this project is done. If the concern is that additional blowoffs are needed, then perhaps they can be moved further down the road. Ms. Randolph hoped rational conversation could be held regarding the possibilities.

Mr. Giberson suspected it was the cost involved in moving them that could be a concern. Mr. Noyes stated blowoffs can be abandoned in place by disconnecting them. Mr. Giberson believed Mr. Slack perhaps requires the blowoffs in the interim during construction, particularly over the winter. Mr. Slack concurred that they were necessary for the interim, however he did not know whether they were necessary for only in the interim. He will not know until the project is complete and testing can occur. Ms. Randolph asked why the blowoff at the end of the line would be inadequate. Mr. Slack maintained that testing must be done to ensure water quality is to the Water District's standards. He protested that the Board's suggestions are out of bounds and an attempt to dictate the Water District's distribution system.

Chair Hanley clarified that the Board is looking for a compromise that would satisfy all parties.

Mr. Slack suggested allowing the project to move forward. After completion, the water can be tested, and a determination can be made regarding the blowoffs.

Mr. Noyes reiterated that an engineering evaluation can determine the size and location of the blowoff necessary now. Mr. Noyes was confident the blowoffs at 13 and 19 Steamboat Wharf Road can be abandoned, and the system will continue to function as it does today. There is no reason to keep them in place. If reasoning was presented by Mr. Slack supporting why they are necessary to remain, then perhaps a compromise could be reached. But the blowoffs are placed at the end of the line. The end of the line is moving. Therefore, the blowoffs can be removed and the system should work just as it has in the past.

Resident William Bishop suggested the Mydlands could request the blowoff's removal once the line is in place.

Chair Hanley noted that once the system is complete and in place, the Water District would evaluate the system. If the blowoffs are deemed unnecessary, they can be removed at that time.

Mr. Noyes rejected the suggestion as unacceptable. The blowoffs must be abandoned at the time the main is replaced. He maintained the system can be analyzed now to determine whether the blowoffs are necessary therefore there is no need to wait.

Chair Hanley pointed out that the Board can table the discussion until such time as the Water District and the Mydlands determine a way forward. Discussion is at an impasse without agreement between the two parties. Dictating blowoff location is beyond the Planning Board's jurisdiction.

Ms. Randolph noted the current blowoffs are attached to a six-inch pipe. There is a 10-inch pipe going in. That pipe will have to be actively attached to the blowoffs. This suggests that there's more involved to leaving the blowoffs in place than just abandoning them. Work must be done to continue using them.

Mr. Slack explained the water main currently in place will be removed at the Water District's cost. The Water District must be diligent in ensuring they are creating potable water for the residents. Once the Water District has data from the new line, the Water District will then remove the blowoffs at their expense and not before.

Mr. Noyes maintained that the line is being extended, therefore, the blowoffs are not necessary. The blowoffs must be abandoned now, and his clients will accept no other option.

Ms. Loftus Keller believed the blowoff discussion is at a standstill. This brings the Planning Board's process to a standstill. Chair Hanley agreed. Additionally, this is not a criterion specific to the Board's review. If an agreement between the parties could be found, the Board could identify it as a permit condition. If the parties cannot reach an agreement, then the Board must move forward with the application review. The issue will likely go through the appeals process.

Mr. Slack identified for the Board the locations of the blowoffs on the drawings. Mr. Noyes stated it is not clear what on the drawings are blowoffs and what are water shutoffs for the service. Mr. Slack clarified that only one blowoff is included in this permit application.

Ms. Randolph reiterated her suggestion of moving the blowoff further down and off the Mydland's properties. That way blowoffs remain if the Water District deems them necessary. Mr. Slack explained that connecting blowoffs to the water main is a simple process. Removing them from their location and relocating to a new location is difficult. The Water District wants to test the line prior to removing the blowoffs. Removing something currently in use is premature.

Relocating a blowoff involves new excavation in a new place, new pipe installation, relocating the blowoff and emergency shut off. It also requires right, title, and interest in the place the new installation is to occur. Mr. Noyes pointed out that it is not clear whether the Water District has right, title, and interest necessary to operate and maintain the blowoffs on the Mydland property. Additionally, a plan to move these blowoffs further down has already been incorporated in the Water District's plan; they plan to install a blowoff at the end of the line.

Mr. Giberson noted that newly installed blowoffs would cost more money that may not have to be spent once the job is complete. It's a waste of money to remove these blowoffs at this time.

Mr. Noyes reiterated that the Water District has not stated whether the blowoffs are necessary or not. Mr. Noyes believes this can be determined now. His clients insist the blowoffs be abandoned.

Chair Hanley stated the options are to table further discussion until an agreement is reached between the two parties, or to review the Application.

Ms. Randolph suggested making it a condition of approval that there's a final review of the blowoffs upon completion of the project. Mr. Noyes rejected the suggestion. He suggested having a third-party independent engineer review the project now.

Mr. Slack restated his opinion that an engineer cannot determine the need for the blowoffs. They must be tested once the project is complete.

Mr. Noyes stated that the need has not been proven. It must be proven first. Ms. Randolph asked why hiring a third-party engineer to review the project after its completion was unacceptable. Mr. Noyes stated it was not proper planning to do it that way; it must be done prior to construction. Further, Mr. Noyes does not understand what will determine whether it can be removed. If the blowoffs are removed after construction, it will involve tearing up newly paved road and re-digging the trench to remove the blowoffs. He reiterated that a third-party review would cost only a few thousand dollars.

Ms. Randolph asked of Mr. Slack how a blowoff is abandoned. Mr. Slack noted it can be left in place and remain unused, or it can be removed completely. Ms. Randolph believed that while Mr. Noyes may not feel it's efficient to wait until the completion of the project before determining whether the blowoffs are necessary, it could lead to the blowoffs being abandoned or removed. Would this not suffice? Mr. Noyes rejected the suggestion. He stated that the simplest approach is to review the project and perform the analysis now. Ms. Randolph pointed out that the Planning Board cannot dictate how the Water District does their job.

Chair Hanley stated there were two options; to state as a permit condition that once the system is in place it must be assessed, or the Board can table discussion until more information from a third-party engineer can be obtained to determine the necessity of the blowoffs in question.

Mr. Slack reiterated that engineers cannot assess the situation.

Mr. Ashmore believed more engineering was needed. The best option would be a third-

party engineer. Or move the blowoff to a location that affects no one. If a blowoff stays in that location, it remains available is necessary. There's a possibility that a review may determine the blowoff must remain in place.

Ms. Kunje agreed that the solution must be one of Chair Hanley's two options.

Chair Hanley suggested having the Water District's own engineer determine whether the blowoffs can be removed or not and come back to the Board with that information.

Ms. Loftus Keller felt that given the two options, having more engineering available is a good idea. And perhaps a new location for the blowoff could be considered as well.

Mr. Giberson believed the project was a simple one, done multiple times elsewhere. The unit is in the ground and needs to be there through the winter. Additional work will be expensive for water users. He suggested doing the work as it's been done in the past, and if it's found to be wrong, then it can be rectified after.

Mr. Slack reiterated that engineers cannot determine at this point in time that those blowoffs can be removed. He will not believe such a thing until it's tested. Blowoffs are a tool to maintain water quality. Removing those blowoffs prematurely is rushing the project. The Water District is being asked to remove one of their few tools for ensuring water quality.

Resident Eliza Bishop inquired what would happen if it's determined that the blowoffs must remain in place. Chair Hanley noted that in that case the Board would make a determination on the Application with that information. If it was contested, the issue would go before the Appeals Board.

Ms. Randolph noted that if it's determined a blowoff is required, an engineer could likely determine another suitable place for the blowoff.

Chair Hanley did not believe the Planning Board could dictate how the Water District does their job. Ms. Randolph pointed out that Mr. Slack has stated he has no faith in an engineer's findings made before the work has been done. Mr. Slack concurred. Chair Hanley believed the only option is to review the Application as presented and decide on whether to have a permit condition or not. If the disagreement remains between the parties, then they will have to bring it to the Appeals process.

Mr. Noyes stated that engineers design water systems. Operators do not. Operators operate the system. Mr. Noyes believed more engineering will provide the answer. Chair Hanley reiterated Mr. Slack's statement that he will not accept such engineering. The Applicant is not in favor of tabling the issue until more engineering can be had. This leaves the Board with one option; reviewing the Application and setting permit conditions.

Mr. Noyes argued a condition could be set that the Water District must hire an engineer

to assess the system prior to construction. Mr. Slack believed this would be akin to directing the Water District in how to do their job.

Mr. Slack countered that Mr. Noyes has not explained why the project can't be tested after completion. A pre-construction assessment is theoretical. Post-construction, the Water District will have operational facts to make a determination.

Mr. Bishop noted this could set a precedent; the next person who doesn't want a blowoff on their property can protest. Blowoffs must be located somewhere.

Chair Hanley explained the Application review process. Discussion is usually done among the Board, until the end when permit conditions are being permitted. This is usually done with the interested parties.

Mr. Noyes stated that if the Board plans to consider the Application at this meeting, then his clients request the Board includes as a condition that an independent third-party engineer be hired to review the Application and to determine whether the Blowoffs are necessary. Additionally, they ask that consideration be given to conditioning the removal of both blowoffs.

Mr. Slack pointed out that there's only one blowoff in his project. The other blowoff was approved in a previous Application.

Mr. Noyes explained that there's technically only one blowoff within the bounds of this project. He asserted that the three projects should have been designed with an integrated approach. If looked at with an integrated approach, both blowoffs are unnecessary. He feels compelled to request it as such. Mr. Slack disagreed. The projects have been discussed and planned for over two years and were created with the other projects in mind.

Chair Hanley closed the public comment.

Ms. Randolph noted the drawings show the blowoff and the connections to the house, but they appear to be identical and therefore hard to identify. The difference should be noted.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO FIND THE APPLICATION COMPLETE.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

GLORIA KUNJE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO USE THE SHORT FORM.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

GLORIA KUNJE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

No Conflict of Interest was found among the Board.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO APPROVE THE APPLICATION.

A review of the Section 6 Checklist was made and is attached to these Minutes.

With regard to Water Quality, discussion ensued regarding blowoff water discharging into the ocean. The Board suggested referring to the DEP regarding the runoff. This would likely require a permit condition. Or the Board could deem the Application Not Complete. If the Application is deemed Not Complete, then the Application can be denied and the Applicant cannot come back to re-apply for nine months, or the discussion can be continued to a date certain.

Discussion of Mr. Noyes' requested Permit Conditions ensued. One of those conditions was the abandonment of the blowoffs and one-inch pipes located at 13 and 19 Steamboat Wharf Road. Ms. Randolph requested clarification: the blowoff at 19 Steamboat Wharf is included in the Ringing Point project and already approved. Mr. Noyes hoped that ultimately, both blowoffs could be removed. Mr. Noyes suggested that if the engineers involved in the various projects could come together to discuss this possibility, Mr. Noyes' clients would be amicable to that as well. Ultimately, the third-party engineer would look at the three projects

Mr. Slack inquired what the process was if the Water District decides to hold off on the project till Spring. CEO Keene stated the project must be started within twelve months of the Planning Board's approval. Mr. Slack suggested that if the Water District waited till the Ringing Point project was complete, the Water District would have an opportunity to look at the water quality issue. It might provide some information on the issue. The Water District could then begin their project in the spring.

Ms. Randolph reiterated Mr. Slack's statement that when the Ringing Point project comes to completion, testing can be conducted that may result in Mr. Slack's feeling confident on whether or not to abandon the blowoff at 13 Steamboat Wharf Road. In that case, the participation of additional engineers may not be necessary.

Mr. Noyes stated the application should be approved with conditions. Mr. Slack's

suggestion appears to imply that an independent engineer review is not necessary. Mr. Noyes suggested having an independent engineer review, or engineers from all the projects working together to make a determination based on the integrated project as a whole.

Mr. Slack reiterated his statement that if the Water District has the opportunity to review the data from the Ringing Point project upon its completion, then the Water District may be able to make a determination on whether or not the blowoff can be eliminated. Mr. Noyes disagreed. His clients want a third-party review regardless of the decision. It is not acceptable to leave the decision to the Water District.

Ms. Randolph explained that the application is the Water District's, therefore it is their prerogative whether to table it or not.

An Applicant can pull their application at any point in the process prior to Board approval.

Mr. Slack believed that if the application proceeds further, it will likely involve the appeal process.

Ms. Randolph pointed out that the process will be the same when the application is brought to the Board at a later date. The process is to the point where the Planning Board is about to approve the application with stated conditions. If the Application is approved, then the Applicant is bound by the permit conditions set. The choice is the Applicant's.

CEO Keene reiterated that if the Application is withdrawn prior to a final approval, the Applicant will have to start the process over at a later date. If the Application is denied by the Planning Board, the Applicant cannot return to re-apply for nine months. If the Application is approved by the Planning Board, the Applicant will be bound by the permit conditions set, unless the Applicant appeals.

Mr. Slack withdrew his Application.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO ACCEPT THE APPLICATION'S WITHDRAWAL.

VOTE:

MEREDITH RANDOLPH: AYE

TRACY LOFTUS KELLER: AYE

GLORIA KUNJE: AYE

CHAIR WILLIAM HANLEY: AYE

MOTION APPROVED 4-0.

B. Conditional Use Approval Application #016-2022

NAME(S): Cherry Bomb, LLC

APPLICANT: Eliza & William Bishop

LOCATION: 1-3 Old Firehouse Lane, Northeast Harbor

TAX MAP: 024 **LOT:** 108-001 **ZONE(S):** Village Commercial (VC)
PURPOSE: Section 5.6 - Amendment to a previously approved
Conditional Use Approval Application (CUA #006-2013).
Restaurant Use.
SITE INSPECTION: 3:30PM

The Application is for an amendment to a previously approved Conditional Use Approval Application, and only a review of Section 5.6 is required.

CEO Keene confirmed adequate Public Notice. Abutters were notified.

No Board Members were in attendance at the Site Inspection.

Chair Hanley disclosed that he had a Conflict of Interest; the Applicant is a client.

MS. RANDOLPH MOVED, WITH MS. LOFTUS KELLER SECONDING, TO ACCEPT CHAIR HANLEY'S RECUSAL.

VOTE:

MEREDITH RANDOLPH: AYE
TRACY LOFTUS KELLER: AYE
DAVID ASHMORE: AYE
GLORIA KUNJE: AYE
MOTION APPROVED 4-0.

MS. LOFTUS KELLER MOVED, WITH MS. KUNJE SECONDING, TO NAME MEREDITH RANDOLPH AS ACTING CHAIR FOR THE DISCUSSION.

VOTE:

TRACY LOFTUS KELLER: AYE
GLORIA KUNJE: AYE
DAVID ASHMORE: AYE
MEREDITH RANDOLPH: AYE
MOTION APPROVED 3-0.

Applicant Eliza Bishop reported that they are proposing to renovate the building. There is a proposed bump-out in the back of the building on the south side. It will be a 15'x20' 300-square-foot addition. The bathrooms will be moved to this space, as well as a mechanical room and office space. There was once a large deck in this area. There will be a 12x12 deck on the south side. A 60sf 8x8 walk-in refrigerator is also proposed for the area. Everything proposed will be in space where previously existing building or deck area was. The previous owner removed the deck, while the Applicant was renting the space. The area is now gravel space approximately 15x30 feet in size.

It was noted the use is not changing. CEO Keene stated the building's been a restaurant for a number of years.

Applicant William Bishop noted work previous owners of the building did was done incorrectly. Part of their renovations will include correcting issues with the roof. The survey notes the work to be done. All renovations will occur within the same footprint.

MS. LOFTUS KELLER MOVED, WITH MR. ASHMORE SECONDING TO FIND THE APPLICATION COMPLETE.

VOTE:

GLORIA KUNJE: AYE

DAVID ASHMORE: AYE

TRACY LOFTUS KELLER: AYE

CHAIR MEREDITH RANDOLPH: AYE

MOTION APPROVED 4-0.

MS. LOFTUS KELLER MOVED, WITH DAVID ASHMORE SECONDING, TO APPROVE THE APPLICATION.

A review of the 5.6 Checklist was made and is attached to these Minutes.

VOTE:

DAVID ASHMORE: AYE

GLORIA KUNJE: AHYE

TRACY LOFTUS KELLER: AYE

CHAIR MEREDITH RANDOLPH: AYE

MOTION APPROVED 4-0.

IV. Other

There was no other business.

V. Adjournment

MS. LOFTUS KELLER MOVED, WITH MS. KUNJE SECONDING TO ADJOURN.

VOTE:

DAVID ASHMORE: AYE

GLORIA KUNJE: AYE

TRACY LOFTUS KELLER: AYE

CHAIR MEREDITH RANDOLPH: AYE

MOTION APPROVED 4-0.

The Meeting adjourned at 9:27PM.