

**Town of Mount Desert Planning Board
Planning Board Meeting Minutes
Meeting Room, Town Hall
6:00 pm, August 11, 2015**

Public Present

Daniel Pileggi, Cynthia Thayer, Janet Leston Clifford, Paul MacQuinn, Jeff Gammel, Nathan D. Hamilton, Hjordis Tourian, Ara Tourian, Stephen Salsbury, George Gilpin, Francoise Leyman, Chip Haskell, Mike Deyling, Robert Michelson, H. Scott Stevens, Maureen McGuire, Jacques Read, Janet Read, Thomas Boatwright, Judith Aylen, C. H. Breedlove, Christine Breedlove, Peter Aylen, Gerald Shencavitz, Laurie Shencavitz, Jean Travers, Charlotte Singleton, Seth Singleton, Dick Broom, Elizabeth Roberts, John Kelley – Acadia National Park, Chris Rawls, Elizabeth Halpern, Pam Bowie, Keith Bowie, Jan Coates, Ed Bearor, Ellen Brawley

Board Members Present

David Ashmore, Chairman Bill Hanley, Dennis Kiley, Meredith Randolph

Also present was CEO Kimberly Keene, and Recording Secretary Heidi Smallidge. James W. J. Collier Esq. was also in attendance.

I. Call to Order

Chairman Hanley called the meeting to order at 6:04 pm. Voting members were noted.

**II. Quarrying License Application:
Public Hearing:**

A. Conditional Use Application #001-2014

OWNER(S): Harold MacQuinn, Inc.

OPERATOR(S): Fresh Water Stone & Brickwork, Inc.

AGENT: Stephen Salsbury, Herrick & Salsbury, Inc.

LEGAL REPRESENTATION: Edmond J. Bearor, Rudman Winchell

LOCATION: Off Crane Road, Hall Quarry

TAX MAP: 007 **LOT:** 075 **ZONE(S):** Residential 2

PURPOSE: Quarrying License Application

Mr. Ashmore confirmed adequate public notice. It was confirmed abutters were notified. No conflict of interest was found.

Steve Salsbury, agent for the applicant, presented an amended quarry application. He pointed out the changes to the application. These changes are noted in the application's Table of Contents. He hoped to cover the issues of stormwater and groundwater impacts tonight.

Dan Pileggi, attorney for the Shencavitz' and Aylens noted that while the footprint has been reduced, there are still issues with the proposed plan. Attorney Pileggi felt there are still violations of the mandatory setback requirements. He noted stormwater issues

1 had changed since the first iteration of the application. Additionally groundwater
2 impact is not addressed in the application.

3
4 Chairman Hanley invited the public to speak.

5
6 Janet Clifford questioned communication to the public between Planning Board
7 meetings. Specifically, she sent a letter via email to CEO Keene with questions and
8 received no answer. When the revised application was presented to the Town, the
9 town's attorney consulted with Attorney Dan Pileggi and Attorney Ed Bearor with
10 regard to the completeness review. In addition, Ms. Clifford took exception to the fact
11 that Attorney Dan Pileggi is referred to as "the opposition", when he is only a hired
12 private attorney to two Hall Quarry residents. Other Hall Quarry residents are also in
13 opposition to the quarry application and she requested that they receive the same level
14 of consideration in all communications. If Attorney Dan Pileggi is being communicated
15 with, and no other Hall Quarry residents are being communicated with then all
16 interested parties are not getting the same representation.

17
18 Chairman Hanley noted Ms. Clifford's email came before the Planning Board that day.
19 The protocol for the Planning Board is that questions are brought before the Chair of
20 the Planning Board. The Chairman then directs the inquiry to those who can best
21 answer. Attorney Collier concurred. Attorney Collier stated that his job is to council the
22 Board, and as such, he is not inclined to answer all questions as they come. He
23 prefers to answer questions at the public hearings so the public in attendance can hear
24 his response. With regard to conferring with the other attorneys involved, Attorney
25 Collier confers with them with regard to procedurally moving things forward. All
26 decisions are made by the Planning Board.

27
28 Ms. Clifford asked whether communications regarding the application were occurring
29 between attorneys outside the Planning Board meetings. Ms. Clifford felt her questions
30 were not answered, however other residents with attorneys are getting their questions
31 answered.

32
33 Attorney Collier noted that there has not been extensive consultation with the other two
34 attorneys during this process. If the Planning Board receives a question they feel is
35 germane to the situation and helpful, then they will answer that question at the hearing.

36
37 Mr. Kiley clarified that while members of the Planning Board receives questions from
38 the public, until the Planning Board meets formally, those questions cannot be officially
39 decided on. While council can be sought from others, no decisions are made till the
40 Board meeting. Chairman Hanley added that the Planning Board is careful in their
41 responses to questions from the public in their efforts to retain transparency.
42 Questions should be answered in a public forum.

43
44 Chairman Hanley suggested discussing the change in the project scope, and how to
45 proceed with the application. He asked to hear the consensus of the Board in the
46 changes to the application.

1
2 Ms. Randolph felt that the criteria for whether to treat this as a new application or not
3 was unclear. Mr. Kiley inquired what constitutes fundamental enough changes to
4 consider this a new application.

5
6 Attorney Collier confirmed that he did not feel the changes warranted a whole new
7 application.

8
9 Mr. Ashmore stated he was in favor of starting over completely, and it required a new
10 site visit.

11
12 Mr. Salsbury noted the changes of the application –

- 13 • the applicant has reduced the Phase 1 operations size from two acres to one
- 14 • the stormwater will now be internally drained
- 15 • the setback from the boundary lines is now a uniform 25 feet
- 16 • a proposed berm has been added

17
18 Ms. Randolph asked if when the DEP required the quarry be reduced to one acre, and
19 based on the basis that the quarry is grandfathered, does this mean that the one-acre
20 size will be the quarry in total, and renders the rest of the property not quarry? Did this
21 mean that the applicant will not be before the Board in the future to expand? Mr.
22 Salsbury felt it did not mean the applicant would not be back. He reminded the Board
23 that the applicant has to be back every five years anyway, and they may in the future
24 revise the site plan.

25
26 Attorney Bearor stated the DEP's position on the old plan made it clear that it didn't
27 require their review and approval. Upon further review, the DEP changed their
28 advisory opinion, and the applicant to amend their plan accordingly. Future expansion,
29 unless the DEP rules change, will require DEP approval. This application is for the
30 Town, and the DEP does not require a permit.

31
32 Mr. Ashmore asked whether the acre in question would always count toward the
33 quarry, or could it be closed down and opened elsewhere. It was Mr. Salsbury's
34 opinion that it would always count.

35
36 Attorney Pileggi felt the changes to the application were substantial. He felt it was a
37 mistake for the Board not to go through all the performance standards. He would
38 object to the Board skipping any performance standards due to the changes and the
39 time that's passed. Additionally, the issues of groundwater, stormwater, noise, dust,
40 erosion control, lighting, blasting are all still of concern to his clients, regardless of the
41 change to impact.

42
43 Chairman Hanley asked if there were other members of the public who wished to
44 speak. Dr. Ara Tourian voiced his concerns over a carte blanche approval over the
45 project, particularly with regard to the issue of noise. He also did not feel this was the
46 best business for the community living in the area. He was also concerned about

1 particulates in the air. Chairman Hanley assured Dr. Tourian that the performance
2 standards will provide opportunity to speak to these concerns.

3
4 Ms. Clifford felt each point should be reviewed as it was the only opportunity to
5 comment on each part of the application.
6

7 Gerald Shencavitz recalled that during the discussion of grandfathering, it was deemed
8 that picking up stone from the quarry area constitutes quarrying. If picking up stone
9 constitutes quarrying then picking stone from the quarry should be limited to occur only
10 within that one-acre area. Mr. Shencavitz feels the other five acres should remain
11 dormant.
12

13 Chairman Hanley asked for a consensus from the Board as to whether to start the
14 performance criteria over, or to start from where the last meeting left off. Chairman
15 Hanley was of the opinion that this did not constitute a new application, however he felt
16 the review of performance standards should start over.
17

18 Ms. Randolph asked what the criteria that waives the applicant's having to have a DEP
19 review was. Attorney Bearor read the following from the DEP's letter, *"based on the*
20 *proposed size of the quarry, which is one acre, a notice of intent to comply with the*
21 *performance standards of the quarry is not required for this project. The law only*
22 *applies to a quarry that is more than one acre in size. See 38 MRSA, Section 490X."*
23

24 Ms. Randolph was unsure whether the application should be considered a new
25 application or a revision.
26

27 Mr. Kiley agreed with Chairman Hanley that while it did not constitute a new application
28 there was substantive enough change to warrant a full review of the performance
29 standards. He felt the Planning Board needed to define the scope of the quarry
30 activity. The question potentially would be addressed in the performance review.
31

32 Mr. Ashmore felt the process should start anew from the beginning, even allowing the
33 public to offer their input on the question of grandfathering. Chairman Hanley noted
34 that the Board did have the consensus that as they waded through the process the
35 public will have a chance to comment on each point. If there were other issues relative
36 to the grandfathering issue, then that could also be brought up. If substantive new
37 information was brought up, it could be revisited. Attorney Bearor noted that the
38 applicant has proceeded based on decisions the Planning Board has made. It was not
39 his feeling that reviewing the completeness review was necessary, and he felt that
40 Attorney Pileggi had concurred. Mr. Kiley stated that the Planning Board had the
41 authority to review any part of the application process, regardless of the disruption or
42 inconvenience of any party.
43

44 It was Attorney Collier's opinion that if the Board wanted to start the process from the
45 beginning, they should make a motion to deny the application. The applicant would
46 then appeal or submit a new application. It was Mr. Collier's legal opinion that the

1 changes to the application would not warrant a new application.
2

3 Ms. Randolph suggested starting over with the performance review and hearing from
4 the public with regard to the issue of grandfathering. It was noted that their decision on
5 grandfathering could be changed.
6

7 Attorney Bearor suggested the Board continue through the review, have a decision on
8 each of the performance standards, and then return to the issue of grandfathering. He
9 felt the Board would not have new information presented regarding grandfathering,
10 therefore he found it hard to believe a different outcome would occur.
11

12 Ms. Clifford noted that grandfathering had not been included on the public notice, and
13 those present may not be prepared to address the issue. To decide to hold the
14 discussion regarding grandfathering tonight would not be fair to those who would like to
15 partake in that discussion who are not prepared or not in attendance.
16

17 Mr. Kiley noted that having one point at which all parties can have input on the
18 question of grandfathering would be more advantageous when the issue goes to court.
19

20 CHAIRMAN HANLEY MOVED THAT THE SCOPE CHANGE OF THE AMENDED
21 APPLICATION DOES NOT WARRANT A REVIEW OF AN ENTIRELY NEW
22 APPLICATION BUT DOES WARRANT A REVIEW OF ALL OF PERFORMANCE
23 STANDARDS ANEW. MR. KILEY SECONDED THE MOTION. MOTION
24 APPROVED 4-0.
25

26 It was the consensus of the Planning Board to have a ten-minute recess. The meeting
27 would reconvene at 7:20.
28

29 Chairman Hanley inquired of Attorney Bearor how they would like to proceed. Attorney
30 Bearor requested they be allowed to address ground water, stormwater, erosion
31 control, and closure. They had an expert on ground water in attendance. The Board
32 agreed to address these performance standards tonight, with the understanding that all
33 performance standards will be addressed during the review process.
34

35 Mr. Salsbury noted page 84 of the application begins the section on groundwater
36 protection.
37

38 Mike Deyling, a hydrogeologist for the applicant, discussed the groundwater issues.
39 He noted the plans included the wells in the area. Within 300 feet, there are no dug
40 wells or point wells. Within 100 feet, no drilled, bedrock wells were found. There are
41 drilled, bedrock wells between 100 feet and 300 feet. Per the standards, these
42 distances are acceptable. The closest public water supply well is for the Somes View
43 Campground and that is greater than a 1000 feet distance, which is an acceptable
44 distance per the standards. Mr. Deyling noted there was one well within 300 feet and
45 two just over the 300 foot distance. The Aylen well is within the 300 foot distance, and
46 the Shencavitz well and the Coates well are just outside the 300 foot distance.

1
2 Mr. Deyling noted that Sections two through four address excavation below seasonal
3 high ground water. The applicant does not intent to go below seasonal high ground
4 water, and therefore are Not Applicable. This is based on the wetland levels in the
5 area. Chairman Hanley asked how a groundwater shift can be measured. Mr. Deyling
6 noted there are ways to measure such a shift.
7

8 With regard to Performance Standard Five, Water Use, Mr. Deyling reported there are
9 no plans to extract groundwater for use. Regarding Standard Six, Acceptable
10 Groundwater Impacts, there will be no permanent storage of petroleum products on
11 site, and there are spill plans in place. There are no plans for septic systems or other
12 contamination sources. The applicant will not put in place additional monitoring for
13 contaminant sources not on site.
14

15 Attorney Pileggi asked whether the change to internal stormwater management would
16 affect the groundwater. Mr. Deyling noted it may temporarily change the distribution of
17 recharge to the system. He does not anticipate any changes in water quality and any
18 change Mr. Deyling felt would be on a temporary basis.
19

20 Mr. Aylen noted that at a site visit a quarry representative stated that the applicant
21 intends to go down 70 feet, or until they hit salt water. Has this intention changed? Mr.
22 Deyling stated the application states that the grades will be approximately 168 to 172
23 which gives a depth range of 15 to 28 feet. He did not know what the quarry
24 representative's comments were referring to.
25

26 C.H. Breedlove has a drilled well and asked what experience Mr. Deyling has with
27 regard to the danger to wells during blasting and other well operations. Mr. Deyling
28 noted that if there were production blasting then there are questions that should be
29 addressed. No production blasting is planned for this site. The DEP notes that
30 distance is the best measure of protection against physical and chemical impacts.
31

32 Ellen Brawley inquired whether the applicant would be monitoring for the oil and gas
33 used at the site. Mr. Deyling noted there is a spill prevention plan in place. The intent
34 is that there is no storage of fuels. Refueling will be done when people are on site. If
35 there is a spill it will be reported to the DEP if it was released to the ground. The DEP
36 would then make a determination of the cleanup necessary. There will be no
37 uncontrolled hazardous substances or petroleum. Small quantities will be kept
38 undercover in vehicles or with personnel. Mr. Deyling noted it would be up to the DEP
39 to monitor a spill, however it would also be of benefit to the applicant to monitor as well.
40

41 Seth Singleton asked whether production blasting is permitted per the application. It
42 was noted that the application does say that blasting may be used. Mr. Deyling
43 explained production blasting which consists of a number of drilled holes filled with
44 blasting agent and blasting an area to break up the rock. Those pieces are then
45 crushed into aggregate. The applicant is not creating aggregate, so production
46 blasting would not be of benefit. Mr. Salsbury noted that the application does have

1 provision for a small blast as necessary to perhaps move a large stone. Mr. Singleton
2 requested that the application be revised to more clearly define the limitations on
3 blasting.

4
5 Attorney Pileggi inquired whether monitoring could be done to determine exactly where
6 the water table is. Mr. Deyling noted that it could be done, however it is simply a
7 snapshot of the water table at that moment in time. Mr. Pileggi noted that monitoring
8 could be in place to assess the water quality throughout the process. Mr. Deyling
9 stated that the DEP requires monitoring wells when excavation is below groundwater.
10 When excavation is above groundwater it is not required. Attorney Pileggi stated that
11 the DEP requires a monitoring well to determine the groundwater levels. Mr. Deyling
12 disagreed.

13
14 Pam Bowie asked how many more potential wells could be affected if the quarry were
15 moved. Mr. Deyling did not have that information. He did not feel there were any
16 within 100 feet of the property line, therefore, there should be very few wells, if any,
17 affected.

18
19 Jan Coates asked how the distances from the wells were measured. She contended
20 that her well was within 100 feet of the proposed quarry. Mr. Salsbury clarified where
21 the quarry is. Ms. Coates felt that the position of her well on the plan was not correct.

22
23 Mr. Shencavitz asked why blasting is included in the application if the applicant does
24 not intend to blast. If the applicant does not intend to blast, it should be removed from
25 the application.

26
27 Mr. Ashmore inquired if blasting were included, could the blasting methods change or
28 could the product from the quarry change. For example, granite could be blasted out
29 to take elsewhere to crush. Mr. MacQuinn felt that blasting would ruin the rock in the
30 area. One production blast could potentially ruin the quarry.

31
32 Attorney Pileggi noted he had brought an expert to discuss the issue. Cynthia Thayer,
33 a certified geologist in the State of Maine working with Stone Hill Environmental, noted
34 the wells in question are quite close to the quarry. She recommended installing
35 monitoring wells. Installing 3-5 monitoring wells would provide a valuable benchmark.
36 She also voiced concern over the spill control, particularly now that the quarry will be
37 internally drained. With monitoring wells, a spill can be tested, and used as sentry
38 wells in the event there is a spill.

39
40 Mr. Kiley inquired what depth a monitoring well would have to go to obtain data. Ms.
41 Thayer estimated that it would have to go below the floor of the quarry by about ten
42 feet. The depths of the other wells would also be taken into consideration to determine
43 the depth.

44
45 Chris Breedlove inquired how often monitoring wells are tested. Ms. Thayer felt it
46 would depend on the sensitivity of the site. They would be tested a minimum of once a

1 year for a quarry with a good track record. She has seen monitoring done as often as
2 once a month during the spring, and once again in the fall. Testing is often done more
3 often right after installation to determine the water quality and levels.
4

5 Mr. Gammelin asked how a source of pollution is determined if found. What if a spill
6 occurs on an adjacent piece of land? Ms. Thayer felt this was a benefit of getting
7 monitoring, or sentry, wells in early. A baseline can be set up to determine the water.
8 A sentry well would be placed between the wells and the quarry. It is possible to
9 determine the direction groundwater is moving in these wells, so a pollution source's
10 direction can be determined. Multiple wells are necessary to gauge direction. It was
11 noted that as little as a cup of gasoline can pollute water above drinking water
12 standards.
13

14 Attorney Collier inquired where in the ordinance it notes that such a monitoring system
15 can be imposed on the applicant. Attorney Pileggi pointed to references to the
16 seasonal high water levels, and notes that the only way to determine these is to have
17 monitoring wells. Mr. Collier noted that the applicant has determined where high water
18 is, however Mr. Pileggi asserted that no one knows where high water is. Attorney
19 Bearor pointed out that Ms. Thayer was not disputing the applicant's findings, she was
20 only saying there were better ways to determine it.
21

22 Ms. Brawley asked if a monitoring well would be installed in the bottom of the quarry.
23 Ms. Thayer felt it could be a good idea.
24

25 Mr. Deyling feels that the information available on the site is significant. He knows
26 there is no groundwater at the bottom of the quarry, and it is at 167 feet. He knows the
27 wetland is at the elevation of 164. He knows Mr. Aylen's well is approximately 30 - 36
28 feet below the ground, and his land is at an elevation of 180. This information is
29 feasible hydrogeological information. Additionally there is no storage of hazardous
30 materials onsite.
31

32 Ms. Randolph asked whether groundwater contamination was an issue before the
33 decision to internally drain the site. Attorney Bearor stated the applicant's position has
34 not changed with this revision to the application. Attorney Pileggi noted that Mr.
35 Deyling said an internally drained quarry can, at least temporarily, affect the
36 groundwater levels. Ms. Randolph felt the change was what necessitates the
37 monitoring wells. Attorney Bearor reminded the board that the risk of contamination is
38 minimal.
39

40 Discussion ensued regarding the question of necessity of wells, and how to require
41 monitoring wells as a condition. Ms. Thayer felt that three wells would be adequate,
42 although 4-5 wells would be better. Mr. Deyling felt that if wells were required, then
43 three should be sufficient.
44

45 Mr. Ashmore felt one well would be sufficient. Chairman Hanley agreed. Mr.
46 Shencavitz felt that one well would not protect all three wells.

1
2 Attorney Collier pointed out Section H1D, which notes a larger buffer as an alternative.
3

4 MR. KILEY MOVED, WITH CHAIRMAN HANLEY SECONDING, THAT BASED ON
5 TESTIMONY BY THE TWO HYDROGEOLOGISTS THE BOARD FINDS THAT
6 THERE IS AN UNCERTAIN UNDERSTANDING OF THE SEASONAL HIGH WATER
7 TABLE; ADDITIONALLY, THE BOARD IS CONCERNED ABOUT CONTAMINATE
8 CONCENTRATION THAT WOULD EXCEED TO MORE THAN ONE HALF OF THE
9 FEDERAL PRIMARY DRINKING WATER STANDARDS (SEE SECTION 6.2H, 2, 3, 4,
10 6A) THEREFORE AS A CONDITION OF APPROVAL THE BOARD REQUIRES THE
11 APPLICANT TO DRILL A MINIMUM OF ONE MONITORING WELL – SITE TO BE
12 DETERMINED BY THE HYDROGEOLOGISTS REPRESENTING THE APPLICANT
13 AND OPPOSITION. MOTION APPROVED 4-0.
14

15 CHAIRMAN HANLEY MOVED TO CONTINUE THE MEETING TO THE NEXT MOST
16 CONVENIENT DATE BASED ON POLLING THE PARTIES. MR. KILEY SECONDED
17 THE MOTION. MOTION APPROVED 4-0.
18

19 **III. Adjournment**
20

21 MR. KILEY MOVED, WITH CHAIRMAN HANLEY SECONDING, TO ADJOURN.
22 MOTION APPROVED 4-0.
23

24 Meeting was adjourned at 9:18pm.