

Quarrying License Permit #001-2014
OWNER(S): Harold MacQuinn, Inc.
OPERATOR(S): Fresh Water Stone & Brickwork, Inc.
AGENT(S): Steven 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: To review completeness of quarrying license application, and conduct Public Hearing.

CHECKLIST

QUARRYING LICENSE ORDINANCE ARTICLE 6 – EXISTING QUARRYING ACTIVITIES

**** Note:** All Conclusions of Law are to be read as if they are prefaced by the words “Based upon said Findings of Fact ...”

STANDARDS FOR USES, PERMITS AND APPROVALS

2.4 Applicability

This Ordinance applies to all quarrying activities as defined as Quarrying in Article 10 (Definitions) of this Ordinance that occur within the boundaries of the Town of Mount Desert, Maine, except as provided in Article 3 of this Ordinance. Quarrying activities are herein after referred to as activities or the activity, and sites on which they occur are referred to as the site, sites, or activity sites.

This Ordinance applies to all quarrying activities including those which are:

1. New or proposed: activity occurring in areas where activities have not previously occurred.

Findings of Fact(s): _____

2. Recurring: activities in areas where such activities had ceased (for more than 12 months) or were inactive and are now reoccurring.

Findings of Fact(s): _____

3. Expansions of activity plans previously permitted by the Planning Board.

Findings of Fact(s): _____

4. Existing quarrying activities

Findings of Fact(s): _____

Conclusion of Law for s. 2.4 Applicability: The proposed use will / will not be compatible with the permitted uses as noted above.

In particular, _____

VOTE: Conclusion of Law - _____

2.6 Types of quarrying activities prohibited.

Any processing of quarry materials at the quarry site. Processing includes such activities as crushing and screening. No gravel pits or borrow pits are permitted.

Findings of Fact(s): _____

VOTE: Findings of Facts - _____

Conclusion of Law: The proposed use will / will not include any processing of quarry materials at the quarry site. Processing includes such activities as crushing and screening. No gravel pits or borrow pits are permitted.

VOTE: Conclusion of Law - _____

6.2 Performance Standards for Existing Quarries

A. General Requirements

1. Quarrying activities shall conform to all applicable State laws and local ordinances and regulations.
2. The owner and operator of a quarrying activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructures, structures and their sites.
3. In all cases, the applicant shall have the burden of proof that all requirements, standards, and conditions of this Ordinance and subsequent approval are met.
4. A copy of the license must be displayed on site at all times.
5. At no point shall the footprint of the active extraction area exceed three (3) acres and at no point shall the footprint of the entire operation exceed a total of five (5) acres.
 - a) The active extraction area must be reclaimed before next three (3) acres can be started.
 - b) Excavation may be done in 1 acre or other increments to ensure continuity of operation.
6. The maximum quantity of material that may be extracted per year is 2,500 cubic yards, not including overburden.

Findings of Fact(s): THE PLANNING BOARD has / has not received documentation that general requirements of Section 6.2.A.1-6 have been met. Applicant will submit a request to DEP and the response from the DEP regarding applicability of State law to quarry.

VOTE: Findings of Facts -

Conclusion of Law: Standards of Sections 5.2A.1 - 8 have / have not been met.

VOTE: Conclusion of Law -

B. Erosion Control

Sediment may not leave the parcel or enter a protected natural resource. Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active erosion and sedimentation control program. Erosion control plans shall show the location and installation details, a description of the timing of installation, inspection and maintenance of erosion control measures. The erosion control program shall be based on industry Best Management Practices and guided by applicable specifications contained in "Maine Erosion and Sediment Control Best Management Practices", published by the Maine Department of Environmental Protection, and, as applicable, the Maine Department of Environmental Protection's general permit for construction activity, enacted as part of the Maine Pollutant Discharge Elimination System.

Findings of Fact(s): THE PLANNING BOARD has / ~~has not~~ received a satisfactory erosion control plan, which is based on industry Best Management Practices and guided by applicable specifications contained in "Maine Erosion and Sediment Control Best Management Practices", published by the Maine Department of Environmental Protection, and, as applicable, the Maine Department of Environmental

Protection's general permit for construction activity, enacted as part of the Maine Pollutant Discharge Elimination System and heard the testimony of Chip Haskell PE, as to the performance standards of erosion control measures and BMPs, and the submission by the applicant. ~~Monitoring of erosion control not addressed.~~

VOTE: Findings of Facts - (Kiley/Randolph) 5-0
Confirmation of the Findings of Fact (Kiley/Ashmore) 5-0
Reconsideration of the motion to confirm that Findings of Fact (Hanley/Ashmore) 5-0
Confirmation of the Findings of Fact, with the exclusion of the final sentence (struck through as above) (Kiley/Ashmore) 5-0

Conclusion of Law: Standards of Section 6.2.B ~~has / has not~~ been met. Based on Findings of Fact as previously stated ~~with the condition that the applicant will provide to the CEO a documentation log or inspections and any corrective actions taken on a quarterly basis.~~

VOTE: Conclusion of Law - (Ashmore/Kiley) 5-0
Confirmation of Conclusion of Law, deleting the portion of the previous motion starting with "with the condition" (struck through above) (Dennis/Randolph) 5-0

C. Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater from the quarry site, roads, driveways, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan. Adequate provisions shall be made for the collection and disposal of water used during the quarrying activities. Stormwater runoff and runoff from water used during quarrying activities must not have adverse impacts on abutting or downstream properties or resources. "Adequate provision" means that the plan effectively removes pollutants, prevents flooding, maintains the natural temperatures of receiving streams, and prevents the degradation of stream channels.

1. To the extent possible, the plan must retain stormwater and runoff from water used during quarrying activities on the site using the natural features of the site.

N/A Applicable, Standard Met Applicable, Standard Not Met

2. Stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate for the 2, 10, and 25-year, 24-hour duration storm event, provided that any system of detention for later discharge shall not cause significant stream channel erosion and destabilization from either the 2, 10, and 25-year, 24-hour duration storm or more frequent storms.

N/A Applicable, Standard Met Applicable, Standard Not Met

3. The applicant must demonstrate that on- and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including, but not limited to, flooding and erosion of shoreland areas, or that he/she will be responsible for whatever improvements are needed to provide the required increase in capacity and/or mitigation.

N/A X Applicable, Standard Met Applicable, Standard Not Met

4. All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved by the Planning Board as part of this review.

N/A X Applicable, Standard Met Applicable, Standard Not Met

5. The design of the stormwater drainage system must provide for the management of stormwater without damage to roads, driveways, adjacent properties, downstream properties, soils and vegetation.

N/A X Applicable, Standard Met Applicable, Standard Not Met

6. The design of the storm drainage systems must be fully cognizant of upstream runoff that must pass over or through the site to be developed and provide for this movement.

N/A X Applicable, Standard Met Applicable, Standard Not Met

7. The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of best management practices as prescribed in "Stormwater Management for Maine", published by the Maine Department of Environmental Protection, may be required.

N/A X Applicable, Standard Met Applicable, Standard Not Met

Findings of Fact(s): THE PLANNING BOARD ~~has~~ ~~has not~~ received a storm water plan which addresses the standards of Section 6.2.C.1-7. And applicant's expert Chip Haskell discussed each of the standards and presented adequate evidence regarding standards listed in Section 6.2.C.1-7. Installation of forebay and level spreader should occur before excess stormwater runoff occurs.

VOTE: Findings of Facts - (Kiley/Randolph) 5-0
Confirmation of the Findings of Fact (Randolph/Ashmore) 5-0

Conclusion of Law: Standards of Section 6.2.C.1-7 ~~have~~ ~~have not~~ been met based on the Findings of Fact as previously stated, with the condition that the applicant will install forebay and level spreader prior to commencement of operations at quarry.

VOTE: Conclusion of Law - (Kiley/Randolph) 5-0
Confirmation of the Conclusion of Law (Kiley/Randolph) 5-0

D. Closure and Reclamation Plans

A quarry closure plan is required to be submitted with all license applications discussing and depicting the following:

1. Soil Stockpiling. Soil that is stripped or removed must be stockpiled for use in reclaiming disturbed land, unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Soil stockpiles must be seeded, mulched, or otherwise stabilized. At least 4 inches of topsoil shall be used for final cover.
 N/A X Acceptable Not Acceptable
2. Highwalls, or quarry faces must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.
 N/A X Acceptable Not Acceptable
3. The methods used to provide public safety for adjacent properties and provisions for fencing, signs, berms, or other site improvements reasonably necessary to assure safety at the site after quarrying activities are completed.
 N/A X Acceptable Not Acceptable
4. Vegetative cover. Vegetative cover must be established on all land being reclaimed except for quarry walls and flooded areas. Topsoil must be placed, seeded, and mulched within 30 days of final grading if it is within a current growing season or within thirty (30) days of the start of the next growing season.
 - a.) Vegetative material used in reclamation must consist of grasses, legumes, herbaceous, or woody plants or a mixture thereof. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account ultimate height, maintenance requirements, soil and site characteristics such as drainage, pH, nutrient availability, and climate.
 N/A X Acceptable Not Acceptable
 - b.) The vegetative cover is acceptable if within one (1) growing season of seeding:
 - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a 75% survival rate; and
 - ii. there are no obvious signs of erosion. N/A X Acceptable Not Acceptable
5. Structures and roads. All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the closure plan.
 N/A X Acceptable Not Acceptable
6. Timeline of closure and reclamation. Closure and reclamation activities shall commence within twelve (12) months following the completion of quarrying operations. Operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period.
 N/A X Acceptable Not Acceptable

7. Phased Closure. To the extent practicable, the area where quarrying operations has already occurred on the site shall be closed prior to the opening of any new on-site quarrying area, and reclamation procedures shall be carried out concurrently with quarrying operations. Standard closure shall commence in accordance with the timeline and phasing approved by the Planning Board. Standard performance guarantee requirements apply.

N/A

Acceptable

Not Acceptable

Findings of Fact(s): THE PLANNING BOARD has / has not received a closure and reclamation plan that addresses the standards of Section 6.2.D. 1-7. That plan was discussed with the Board by the applicant's expert, Chip Haskell, P.E. A performance guarantee was not offered.

VOTE: Findings of Facts - (Kiley/Andrews) 5-0

Conclusion of Law: Based on the Findings of Fact as aforesaid, the standards of Section 6.2.D. 1-7 have been met, except that the applicant will provide a performance guarantee that is acceptable to the Board.

VOTE: Conclusion of Law (Kiley/Ashmore) 5-0

E. Petroleum Usage

If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a Spill Prevention Control, and Counter measures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378), and shall be submitted with the application and kept with the license in the Town's records.

Findings of Fact(s): Applicant did not provide for a designated refueling area or removal of fueling vehicles at night.

(Kiley/Randolph) 4-0

Conclusion of Law: The standards of Section 6.2.E ~~have / have not~~ been met, subject to the

Condition that there shall be one dedicated refueling area with a fuel pad at the site and the fueling vehicle shall be removed from the site at night.

VOTE: Conclusion of Law (Kiley/Randolph) 4-0

F. Buffering and Screening

The owner or operator shall provide and/or maintain effective year-round visual screening of the quarry operations. In those areas where fully effective visual screening is not feasible, the owner or operator shall make every reasonable effort, through screening, to minimize the visual impact of quarry activities to the neighbors. The design for such screening/buffering shall utilize existing land contours, artificially created berms, natural vegetation on site and plant material not presently on site, permanent fencing, walls or other techniques. All of the above shall be supplied and maintained by the owner or operator. The following provisions shall also apply:

1. Protected Natural Resources: Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any quarrying operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. The Applicant must provide a sufficient benchmark on the property to indicate this setback.
 N/A Applicable, Standard Met Applicable, Standard Not Met
2. Quarrying operations shall not be permitted within fifty (50) feet, horizontal distance, of any property line without written permission of the owner of such adjacent property. Any existing operation which is located less than fifty feet from the property line shall not be located any closer than the existing location without written permission from the adjacent property owner.
 N/A Applicable, Standard Met Applicable, Standard Not Met
3. All buffers must be preserved in their natural vegetative state as existed 6 months prior to an application for a new quarry, or for an expansion to an existing quarry, in the natural vegetative state that existed at time of initial licensing by the Town.
 N/A Applicable, Standard Met Applicable, Standard Not Met
4. The Planning Board may require as a condition of approval the applicant to take specific actions to insure the long-term effectiveness of any buffers or buffer yards, including, but not limited to, the planting of trees and/or shrubs, placement of solid fences or creation of berms when the natural existing vegetation does not provide a sufficient visual screen. The design of any fences, walls, berms or other structural screening shall be submitted to the Planning Board as part of the application. The owner or operator shall maintain the buffers to ensure that they continue to function in an effective manner. Dead trees and shrubs that are intrinsic to the buffer yard shall be replaced within one (1) year after they have died.
 N/A Applicable, Standard Met Applicable, Standard Not Met
5. The applicant may elect to increase the width of the natural buffer area in order to achieve an adequate visual screen.
 N/A Applicable, Standard Met Applicable, Standard Not Met
6. 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.
 N/A Applicable, Standard Met Applicable, Standard Not Met

Findings of Fact(s): _____

_____ Section 6.2.F.1 – (Eaton/Asmore) The standard delineated in quarry licensing ordinance
_____ section 6.2.F.1 is Not Applicable as there is no “wetland”, as that term is defined in the ordinance
_____ of the quarrying licensing ordinance, within 75 feet of any part of the quarrying operation.

_____ The Board bases its decision on the report from the Applicant’s certified wetlands scientist.
_____ That the wetlands shown on SP1 is in large part a forested wetland.

_____ Motion approved 5-0-1 (Keller in Abstention)

Conclusion of Law: _____ The standards of Section 6.2.F.1-6 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ - _____

G. Road and Driveway Design, Circulation and Traffic

1. Any new driveway or road shall conform to the standards set forth in the Town of Mount Desert Land Use Zoning Ordinance, Subdivision Ordinance, and in the Public Right-of-Way Ordinance, as applicable. Driveways or Access/egress roads leading to or from the quarry site to paved public ways shall be treated with suitable materials to reduce the production of dust and mud. The applicant shall include a choice of surface treatment in the permit application to the Planning Board.

N/A Applicable, Standard Met Applicable, Standard Not Met

2. The first 200 lineal feet from the intersection of the public road and the driveway or road leading to or from the quarry site to access/egress road along the access/egress road shall have a bituminous pavement surface, an alternate hard surface or crushed rock/stone surface to limit the tracking of unsuitable material onto the public road. The applicant shall include a choice of surface treatment in the permit application to the Planning Board.

N/A Applicable, Standard Met Applicable, Standard Not Met

3. The Planning Board upon the recommendation of the Public Works Director may require a paved apron to be constructed along the width of the intersection of the quarry road/driveway and the public road that extends into the quarry road a minimum of five-feet.

N/A Applicable, Standard Met Applicable, Standard Not Met

Findings of Fact(s): _____ Applicant described driveway and travel surfaces; see application.

_____ Applicant did not address 6.2G.3.

_____ (Randolph/Kiley) 4-0

Conclusion of Law: The standards of Section 6.2.G.1-3 ~~have~~ / ~~have not~~ been met, subject to
the condition that (per 6.2G.3) the applicant will construct a paved apron at the end of Crane Road
if required to do so by the Public Works Director. The applicant will contact the Public Works
Director and report back to the Board.

VOTE: Conclusion of Law (Randolph/Kiley) 4-0

H. Ground Water Impacts:

1. Water Supply buffer:

- a) A three hundred (300) foot buffer must be maintained between the edge of footprint of operation and any currently in use pre-existing private drinking water supply that is point driven or is a dug well. This buffer requirement does not apply when the well belongs to the owner of the excavation site.

N/A X Applicable, Standard Met Applicable, Standard Not Met

- b) A one hundred (100) foot buffer must be maintained between any active excavation area and any private drinking water well that is drilled in to saturated bedrock prior to the quarrying extraction activity.

N/A X Applicable, Standard Met Applicable, Standard Not Met

- c) A one thousand (1,000) foot buffer must be maintained between the edge of the active extraction area and any well or spring which qualifies as a public drinking water supply that was in use prior to the effective date of this division.

N/A X Applicable, Standard Met Applicable, Standard Not Met

- d) The Planning Board may require larger buffers from water supplies, if they find that a hazard is shown to exist due to the Quarrying Activity by a hydrogeologic study performed by a hydrogeologist licensed in the State of Maine. The hydrogeologic study will be paid for by the licensee if required by the Planning Board.

N/A X Applicable, Standard Met Applicable, Standard Not Met

2. Excavation below the seasonal high water table is prohibited except if a Maine DEP variance is granted and a copy of the DEP variance approval is on file with the Town.

X N/A Applicable, Standard Met Applicable, Standard Not Met

3. In the event of excavation below the seasonal high water table, the operator of a quarrying activity that affects a public drinking water source or a private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action

that a person whose water supply is affected by a quarrying activity may have.

N/A Applicable, Standard Met Applicable, Standard Not Met

4. In the event of excavation below the seasonal high water table, a three hundred (300) foot buffer must be maintained between the limit of excavation and any predevelopment private drinking water supply, and a one thousand (1,000) foot buffer must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. These separation distance requirements do not apply when the private water supply belongs to the owner of the excavation site.

N/A Applicable, Standard Met Applicable, Standard Not Met

5. Water Use: The use of groundwater for quarrying operations is prohibited.

N/A Applicable, Standard Met Applicable, Standard Not Met

6. Standards for Acceptable Ground Water Impacts

- a.) No quarrying activity shall increase any contaminant concentration in the ground water to more than one half of the Federal Primary Drinking Water Standards at the property boundary. No quarrying activity shall increase any contaminant concentration in the ground water to more than the Federal Secondary Drinking Water Standards at the property boundary. Projections of ground water quality shall be based on the assumption of drought conditions (assuming 60% of annual average precipitation).

N/A Applicable, Standard Met Applicable, Standard Not Met

- b.) If ground water contains contaminants in excess of the primary standards, and the activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

N/A Applicable, Standard Met Applicable, Standard Not Met

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 6.2.H.1-6 **have / have not** been met, in particular

Based on testimony by the two hydrogeologists the Board finds that there is an uncertain understanding of the seasonal high water table; additionally, the Board is concerned about contaminate concentration that would exceed to more than one half of the Federal Primary Drinking Water Standards (see Section 6.2H, 2, 3, 4, 6A). Therefore as a condition of approval the Board requires the applicant to drill a minimum of one monitoring well – site to be determined by the hydrogeologists representing the applicant and opposition.

VOTE: Conclusion of Law (Kiley/Hanley) 4-0

I. Signs

Any signs must comply with the standards of other applicable ordinances.

Findings of Fact(s): Applicant described signs at site; see application. Specified signs at entrance,
Along perimeter, and at refueling area required for public safety.

(Kiley/Randolph) 4-0

Conclusion of Law: The standards of Section 6.2.I. ~~have~~ / ~~have not~~ been met, subject
To the conditions that 1) a sign will be posted at the entrance to the site warning of the existence
Of quarry; 2) as appropriate, no trespassing/warning signs will be posted every 50' along the
perimeter of the site; 3) a sign will be posted designating the refueling area.

VOTE: Conclusion of Law (Kiley/Randolph) 4-0

J. Noise

The best practicable means of reducing noise shall be employed which may including the use of sound reduction equipment, acoustic enclosures or sheds, limiting on-site speeds to no more than 10 mph, or other best industry practices for noise attenuation, to the extent permitted by state and federal laws and regulations.

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 6.2.J. ~~have~~ / ~~have not~~ been met, in particular

VOTE: Conclusion of Law -

K. Hours of Operation

The hours of operation for any and all activities shall not be earlier than 7:00 AM and not later than 4:00 PM, Monday through Saturday. The hours of operation shall not be revised, waived or modified

by the planning board. Nothing contained herein shall be deemed to prevent the emergency maintenance or repair of equipment.

Findings of Fact(s): Applicant proposed Monday through Saturday 7am – 4pm with no drilling
Before 8am; see application. Monday through Friday 7am – 4pm provides a standard work-week:
Public comment indicated a preference for no weekend operation.
(Kiley/Randolph) 4-0

Conclusion of Law: Based on the Findings of Fact of Section 6.2K the hours of operation shall
Be no earlier than 7am and not later than 4pm Monday through Friday, with no drilling
before 8am.

VOTE: Conclusion of Law (Kiley/Randolph) 3-1 (Kiley opposed)

L. Dust Control

Dust generated by activities at a quarry, including dust associated with traffic to and from a quarry, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturers labeling guidelines are followed.

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 6.2.L. **have / have not** been met, in particular

VOTE: Conclusion of Law -

M. Blasting

For operations involving blasting, the owner or operator shall maintain records of the blasting operation, provide for supervision of the blasting activity by a person qualified, experienced and regularly engaged in such work, and provide the Town with prior notice of the drilling and blasting activity as required by the Planning Board. Blasting for quarrying activities shall follow industry Best Management Practices and procedures set forth in Title 38 M.R.S.A.,§ 490-Z.

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 6.2.M. **have / have not** been met, in particular

VOTE: Conclusion of Law -

N. Lighting

Lighting must be shielded away from adjacent road, driveways and residential areas. Lighting shall be in conformance with the standards set forth in the Town of Mount Desert Land Use Ordinance.

Findings of Fact(s): Applicant stated that no lighting is proposed; see application.

(Kiley/Randolph) 4-0

Conclusion of Law: Section 6.2N is not applicable given the hours of operation.

VOTE: Conclusion of Law (Kiley/Randolph) 4-0

ARTICLE 7 – PERFORMANCE GUARANTEES

7.1 Types of Guarantees

With submittal of the application for Final Plan approval, the applicant shall provide one of the following performance guarantees for an amount adequate to cover the total costs of all required closure plans, taking into account the time-span of phasing for reclamation, or closure schedule and the inflation rate for costs:

- A. Either a certified check payable to the Town or a savings account or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or
- B. An irrevocable letter of credit from a financial institution establishing funding for the construction or closure plans of the activity, from which the Town may draw if closure, reclamation or construction is inadequate, approved by the Selectmen;
- C. The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of a Licensed Professional Engineer, Code Enforcement Officer, Town Selectmen, and/or Town Attorney at the cost of the applicant if applicable.

Findings of Fact(s):

Conclusion of Law: The standards of Section 7.1 **have / have not** been met, in particular

VOTE: Conclusion of Law -

7.2 Contents of Guarantee

The performance guarantee shall contain a closure and reclamation schedule, cost estimates for each major phase of the closure and reclamation process taking into account inflation, provisions for inspections of each phase of closure and reclamation process, provisions for the release of part or all of the performance guarantee to the license holder, and a date after which the license holder will be in default and the Town shall have access to the funds to finish closure activities and/or reclamation.

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 7.2 have / have not been met, in particular

VOTE: Conclusion of Law - _____

7.3 Escrow Account

For any account opened by the license holder, the municipality shall be named as owner or co-owner, and the consent of the municipality shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the municipality has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

Findings of Fact(s): _____

Conclusion of Law: The standards of Section 7.3 have / have not been met, in particular

VOTE: Conclusion of Law - _____

7.4 Letter of Credit

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the complete closure and reclamation of the activity site and may not be used for any other project or loan.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.4 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ -

7.5 Phasing of Development

The Board may approve phased performance guarantees, when an activity is approved in separate and distinct phase development.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.5 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ -

7.6 Performance Guarantee Review

Any proof of financial capacity shall be reviewed no later than 60 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.6 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ -

7.7 Release of Guarantee

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, upon the report of a Licensed Professional Engineer and concurrence of the CEO and Board of Selectman, that the closure and reclamation meets or exceeds the design requirements for that phase of the closure or portion of the reclamation for which the release is requested.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.7 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ -

7.8 Default

If upon inspection, CEO or other inspecting official finds that any of the required closure activities or reclamation has not been performed in accordance with the approved plans and specifications, he/she shall so report in writing to the Municipal Officers, the Planning Board, and the license holder and guarantor. The license holder shall have 30 days unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, Municipal Officers shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.8 **have / have not** been met, in particular

VOTE: Conclusion of Law _____ -

7.9 Improvement Guarantees

Performance guarantees may be required for all offsite improvements required by this Ordinance, when the Board finds that the scale of the improvements warrants.

Findings of Fact(s): _____

Conclusion of Law: _____ The standards of Section 7.9 **have / have not** been met, in particular

VOTE: Conclusion of Law -

**FOR BOARD USE
QUARRYING LICENSE**

APPLICATION: _____ #001-2014 _____

PERMIT CONDITIONS: *In addition to having all applicable federal, state, and town permits be in place prior to any construction, the following conditions apply:*

APPLICATION

APPROVED: _____

(Date)

DENIED: _____

(Date)

NOTE: *The holder of a Conditional Use Permit/Approval must construct and operate the approved conditional use as applied for and as represented during the permitting process to the Planning Board.*

NOTE: *The Land Use Zoning Ordinance requires that a Conditional Use Permit/Approval must be undertaken within one year from the date of approval, or a new permit must be obtained.*

MINUTES OF THIS PUBLIC HEARING CONSTITUTE A PART OF THE RECORD FOR THIS MATTER

SIGNATURES OF ALL VOTING BOARD MEMBERS:

Ellen Brawley, Chairman

Lili Andrews, Secretary

William Hanley

Dennis Kiley

David Ashmore

Meredith Randolph