

**TOWN OF MT. DESERT ZONING BOARD OF APPEALS**

**REPORT OF DECISION**

**Date of Hearing:** October 17, 2012

**Appellants/ Applicants:** Harold MacQuinn, Inc. and Freshwater Stone & Brickwork, Inc.

**Appellants' Attorney:** John Hamer, Esq., Rudman Winchell, P.O. Box 1401, Bangor, ME  
04402

**Appellants' Relationships to the Property:** respectively, landowner and lessee

**Location of Property:** Off Crane Road, Hall Quarry (Tax Map 7, Lot 75)

**Applicable Zone:** Residential Two (R2)

**Use Applied For To Planning Board:** Approval of reclamation plan for mineral extraction

**Basic Description of the Project:**

Appellants/Applicants applied to the Planning Board for approval of a reclamation plan for reclaiming the land after quarrying is ended.

**Is the use applied for allowed in the zone in which the project is located?** Yes. The Planning Board previously found that the use is mineral extraction.

**Are the dimensional requirements met?** Yes.

**Synopsis of Planning Board Decision Being Appealed:**

Planning Board on August 27, 2012 determined that Mt. Desert Land Use Zoning Ordinance ("LUZO") §6B.12(4) gave the Planning Board the authority to review the application against the general review standards contained in LUZO §§6A.1 through 6A.10 as well as the specific performance standards of §6B.12(1) through (4). The Planning Board concluded that §6B.12(4) gave the Board the authority to impose such conditions resulting from that review. As the Applicants refused to provide the information the Planning Board decided was necessary for consideration of the general and specific standards, the Planning Board found that the application was incomplete and that the Board was unable to undertake the appropriate analysis of the reclamation plan. On that basis, the Planning Board denied the application to approve the reclamation plan.

**Type of Appeal:**

Administrative appeal wherein Zoning Board of Appeals ("ZBOA") acts in a purely appellate capacity, limiting review to record developed before the Planning Board and the parties' argument based on that record.

**Standard of Review:**

ZBOA to reverse the decision of the Planning Board only upon a finding that the decision is clearly contrary to specific provisions of the applicable ordinance.

**ISSUES AND ARGUMENTS**

**Appellants' Positions:**

Attorney Hamer argued that:

1. the Planning Board erred in applying §6B.12(4) to this application for approval of the reclamation plan, because §6B.12(4) is only applicable when the Planning Board is reviewing a conditional use permit, and does not apply in this zone, where the use is permitted; and
2. the Planning Board had no further reason to deny the application for approval of the reclamation plan submitted, and the ZBOA should reverse the decision of the Planning Board and direct the Planning Board to approve the application.

**Opponents' Positions:**

Daniel Pileggi, Esq., attorney for neighbors of the property, argued that:

1. §6B.12(4) cannot be ignored under the laws of ordinance interpretation, and the Planning Board did not err in requiring additional information from the Applicants pursuant to §6B.12(4);
2. in addition to the requirements of §6B.12(4), an appropriate reclamation plan was not submitted by the Applicants because §6B.12(1) requires a plan to "describe in detail" procedures to be undertaken to fulfill the requirements of §6B.12(3), and Appellants' reclamation plan does not do so; and
3. as Applicants failed to provide the information to satisfy the requirements of the LUZO as requested by the Planning Board, the Planning Board was correct in denying the application, and the ZBOA should deny the appeal.

**FINDINGS**

1. Under §§3.4 and 6B.12 of the LUZO, mineral extraction is a permitted use in the Residential 2 zone, but, if 100 sq. ft. or more of ground surface is to be disturbed, a permit from the Code Enforcement Officer must be obtained, requiring consideration by the Code Enforcement Officer of the factors set forth in §6A.1 through 6A.10 of the LUZO before the permit may be issued.
2. LUZO §6B.12(1) requires that a reclamation plan be filed with and approved by the

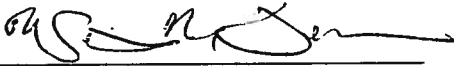
Planning Board before a permit is granted by the Code Enforcement Officer in the Residential 2 zone.

3. LUZO §6B.12(4) allows the Planning Board to impose conditions only as are necessary with respect to the reclamation plan.

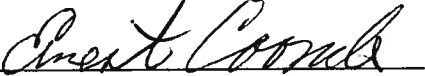
### CONCLUSIONS

1. The Planning Board's Decision requiring the Applicant to provide information so that it could review the application against the general performance standards of LUZO §§6A.1 through 6A.10 was clearly contrary to LUZO §6B.12(4), because §6B.12(4) pertains only to the reclamation plan, which is all that is before the Planning Board. The Decision of the Planning Board is reversed.
2. On remand, the Planning Board shall consider §6B.12(4) only as it applies to the reclamation plan.

#### VOTING IN FAVOR:



William Ferm, Chair



Ernest Coombs



Julianna Reddish



Kevin Walls



Edith Dunham

Jerome Suminsby

James Bright

#### VOTING AGAINST:

William Ferm, Chair

Ernest Coombs

Julianna Reddish

Kevin Walls

Edith Dunham

Jerome Suminsby

James Bright

