

**St. George Planning Board
St. George Town Office
August 11, 2020 - 7 p.m.**

The Planning Board meeting was called to order at 7:00 p.m. via Zoom. Members present were: Anne Cox, Chair; Jane Brown, Ray Emerson, Mary K. Hewlett, Michael Jordan, and Alan Letourneau. Also present: CEO Terry Brackett, Richard Bates, David Emery, Liz Matthews, Joseph Talbot, Paul Gaudette, and David Noonan, and James Balano.

Quorum: A quorum was present.

Conflict of Interest: None.

Adjustments to Agenda: None.

Review of the Minutes:

Planning Board Meeting - July 28, 2020 – The minutes were corrected as follows:

Under On-Site Inspection, line 2, clarify vote as 3 in favor, 2 abstentions.

Page 2 corrections: under Michael Smith, paragraph 2, correction to line 3: ... house, a portion of which...

Line 6, correct word to reconstructed.

Page 4 corrections: paragraph 2, lines 1, 2, & 3. Replace the word they with we (in 4 places)

Paragraph 7, line 1, delete the 1st is, correct word to built, delete the word it

Page 6, under Midcoast Marijuana Company, change Proposed Use to: Medical Marijuana.

Page 7 corrections: 1st full paragraph, line 4, correct actual to factual

Paragraph 2, lines 6 & 7, change to read: ... to come to a different conclusion than the Board of Appeals.

Paragraph 2, line 10, delete bolded sentence in its entirety.

Page 8, under Other Business, lines 4 & 5, change to read: ... or the ordinance should be changed to be less confusing in subsequent paragraphs.

A motion was made by Jordan, seconded by Brown, to approve the minutes of July 28, 2020, as corrected. The vote was 5-0. The motion carried.

Ray Emerson was elevated to voting status replacing Jane Brown as she did not attend the Wildcat Quarry on-site inspection.

On-Site Inspection – August 3, 2020 – Wildcat Quarry, LLC, Atwood's Quarry Road

The minutes were corrected as follows:

Page 1, correct name to Pete's Peak throughout the minutes

Page 3, paragraph 9, line 3, delete the word of

A motion was made by Letourneau, seconded by Emerson, to approve the August 3, 2020, on-site inspection minutes, as corrected. The vote was 4 in favor, 1 abstention (Jordan). The motion carried.

Public Comments: None.

Site Plan Review:

a. Wildcat Quarry, LLC – David Noonan was present at the town office and participated via Zoom. The application is to perform granite grout recovery at the Wildcat Quarry on Atwood Quarry Road, Long Cove. An on-site inspection was held on August 3, 2020, at 5 p.m., and a Public Hearing was held on August 11, 2020, at 7 p.m. via Zoom.

Planning Board Discussion (edited and nonverbatim):

Chair Cox asked, "How is this different from somebody removing topsoil from their property, for instance, on the corner of Rt. 73 and Rt. 131?"

Hewlett, "A good question. I would assume this is before us because there is no existing permit at this site." Chair Cox asked if a permit is needed.

CEO Brackett stated he does not believe Noonan needs a permit. Brackett, "There were some concerns that came to me and I did not really know what was going – if roads were being built or if they were pre-existing and that type of thing. This gave the Planning Board the opportunity to go see the site and see what they were doing, squelch any concerns, and Noonan should be okay." Emerson agreed.

Chair Cox stated the only issue she has is that this is mineral extraction. "It's removing things that are on the surface." She noted that a small portion of this property is in the Shoreland Zone and concern has been raised about the proximity to the big mounds and that those might fall over onto Haskell Point Road. Chair Cox stated Noonan marked the area with orange flagging, and by her observation, the flags seemed to be a significant distance from Haskell Point Road.

Chair Cox, "The issue MMA raised - is this a new commercial or industrial use? Sounds like this may have stepped up the extraction of the waste granite but it has been going on."

Chair Cox remarked this is not a quarrying operation; it is simply removing what is on the surface.

Hewlett, "I do think that if they were bringing in a grinder and a crusher that changes the scope of the current operation, but the current operation is harvesting something that is already on the ground."

Chair Cox, "And returning it to a safer, natural ground level. That does seem significant."

Hewlett said she thinks the area on Haskell Point Road is a significant natural historic granite pile and asked, "Does anyone remember that?" She asked CEO Brackett if he remembered anything about it.

CEO Brackett, "I do not. It is kind of historic in the area because it has been there for years but there is nothing that says that couldn't be harvested." Hewlett said she looked everywhere for

information on it, but it was not listed as one of the historic places in St. George, though she thought it was.

Chair Cox, "So, it is not historic. Do we even need to have a permit issued, given the extent of the clear boundaries Mr. Noonan laid out for us and showed us where the flagging was?"

Jordan, "The post-extraction of what is sitting on the surface, it just a continuation of a quarrying operation and less invasive than the quarrying operation that was going on in the early part of last century. It is not a change of use." Chair Cox agreed.

CEO Brackett, "It is recovery of their waste product." (Hewlett and Jordan agreed.)

Chair Cox, "So is it less invasive than digging up your topsoil and carting that off as it's on the surface?" (Brackett said yes.)

Jordan said he was going to ask a different question. "What if the operation was purposed to go past the orange markers and was to take down a rock pile that was seen on Rt. 131, and ask 'What road?' I think we might agree there might be some engineering and questions regarding the dangers of doing that. What would we do about that if that is proposed?"

Chair Cox, "The property does touch, just barely, on the Shoreland Zone, and we talked about mineral extraction. I have the definition here. 'Any operation within any 12-month period which removes more than 100 cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat or other like material from its natural location and to transport the product removed away from the extraction site.' So, it does seem like transporting more than 100 cubic yards of this material away would be a mineral extraction activity which can be permitted and would need a permit."

Jordan asked if the applicant owns the property the mound is sitting on, and Chair Cox said he owns half of the mound. Jordan asked if that is all the way to Haskell Point Road. Chair Cox said no and referred to Exhibit A in the packet. Noonan asked to speak.

Noonan, "I've got this guy nailed down as to where he can harvest and remove granite from. So, if I ever wanted to get near the water or do something different, I would come to see Terry Brackett. He would have me get any DEP permits that we might need, and we could have another walkthrough and explain what is going on and do that when the times come. Right now, we are not in that zone and we are not near the Haskell Point Road like David Emery said, and we are just doing our thing like we are. And if I expand towards the water, I will let you know."

Chair Cox, "That would be my concern. If we did expand towards the water towards that pile, there is the risk of de-stabilizing. It feels like he is 500' away from the road. He's got very clear demarcation, but I am not an engineer and do not know if doing that work there will de-stabilize it. Common sense-wise, it doesn't look like it would."

Letourneau, "He's quoted as saying, 'We don't cut anything. We are not blasting. We are not making any crushed stone.' So, even the activity is limited to picking up what is there."

Noonan, "That is right. That is why I offered this information so you all could see it."

Chair Cox, "So if there is any change and we get any closer to the Shoreland Zone, then yes he (Noonan) will need to come for a permit, if we go in this direction." Noonan stated he understood.

Jordan, "I am looking at the map and it does look like the property line is well back from the road. We just don't have jurisdiction over that. Maybe the answer is they can do anything they want, but it seems to me they can't really do that because they don't own the land. If they were to get the land and when it gets close enough to the Shoreland Zone, I guess we do have jurisdiction."

Chair Cox, "Otherwise, it seems like we don't for the current project." Planning Board members agreed. Letourneau stated the Planning Board should refer this application back to Terry Brackett.

Hewlett stated that during public comment it was mentioned that the Planning Board would appreciate having the work done during business hours, not in the middle of the night. CEO Brackett said the contractor's hours are in the contract. Hewlett said she appreciated Noonan explaining the operation at the on-site which helped greatly and being so honest.

Chair Cox suggested the Planning Board make a formal statement that the Board does not believe that they have jurisdiction over this activity based on any of the town's existing ordinances.

A motion was made by Hewlett, seconded by Emerson to refer the Wildcat Quarry, LLC application back to CEO Brackett for his review as the Planning Board feels it does not have jurisdiction over the granite grout recovery project based on the town's existing ordinances. The vote was 5-0. The motion carried.

Chair Cox reminded Noonan that if he wanted to expand his operation, he will need to talk with the Code Enforcement Officer. Noonan thanked everyone and stated he appreciated that information.

Emery, "We will probably submit a letter signed by Eliza Bailey which essentially summarizes in writing what I mentioned tonight for the record." Chair Cox thanked Mr. Emery and noted it would be included in the file.

At this time, Ray Emerson stepped down as a voting member and Jane Brown assumed her regular voting status.

Piers:

a. James Balano, Wheeler's Bay Oyster Company, 43 McCoy Road / Map 233, Lot 057
The application is to install and maintain a 3' x 36' ramp leading to a 12' x 16' float below the MHWL (Mean High Water Line) of a branch of Harrington Cove/Wheeler's Bay on property

located at 43 McCoy Road in St. George. The structure will extend approximately 35' below the MHW (Mean High Water Mark).

Balano stated the following information. There is a cove on his wife's property where he grows oysters. The area is intertidal. It pretty much dries up except for the stream bed at low water. There is an old granite dam at the mouth of the cove which limits access until approximately two hours into the tide. To access the oysters, he could work an extra two hours on a tide if he could put a ramp and float in that area, to get down to the flats. The mud is so heavy it goes up to your knees, takes your boots off, and you cannot do anything. If he could access his boat a little earlier and stay a little bit later, he could do his work during a tide.

Balano said DEP and the Army Corps of Engineers surveyed the area and both have permitted it. The drop-dead time is between October 13, 2020, and October 13, 2021, which means he has to start work by October 13, 2020, and finish it by October 13, 2021.

Balano said the actual impact and its indirect impact on some of the marsh grass is about 300 square feet of shading to marsh grass. Other than that, there is minimal impact. He said a berm will be put in place so he can back his truck down from the existing road to the house. It is a maximum of 50' from the road to where the bank is. There will be a concrete pediment there which will be the starting point for the 36' ramp down to a 12' x 16' float. Balano stated he will be able to park his truck and wheel things up the ramp such as Kubota with a trailer and bring heavy items up off the float.

Chair Cox asked what material will be used on the road which leads down to the concrete landing pad. Balano said he needs to install a culvert just before it approaches the bank to divert more groundwater. His father-in-law used to live there, and he put in the road. When his father-in-law did that it changed the natural flow of the water. With a culvert, the water will run the other way down a natural stream bed that goes in the opposite direction into Wheeler's Bay.

Balano explained. A drainage culvert will be installed first. Then from the existing road to where the ramp starts will be a plus or minus 1 kind of gravel, and they/DEP and USACE stipulate that the surface will have to be grassed. That will be a level approach from the existing road to where the footing is for the ramp. The footing for the ramp will be concrete. It will have the attachment float embedded in it which will probably be stainless steel and the surface of the ramp will be flush with the concrete so you can wheel something up over there without catching on it. Then the 36' ramp x 3' wide will start there and go down to a float that is 12' x 16'. The float itself will have to have a footing on it so that it does not sit in the mud.

Hewlett said it looks as though the ramp will have an open grate to allow that grass to get sun inside of the shade. Balano said yes, "There is more than one reason for that kind of a surface but part of it is to allow some sunlight through."

Hewlett said it looked like there is going to be some rip rap put in by the concrete pedestal. Balano said yes and they will want to stabilize the bank because when the road was put in years ago, it did change the water flow. There has been significant erosion and there is quite a lot of bank slump because the mud gets supersaturated. He stated the stabilization will be similar to a

large stone kind of wall that is pegged into the ground and hopefully that will keep that bank from falling into the cove.

Chair Cox noted this application is a bit different from other ramp and float applications they have seen but believed the Planning Board needs to do an on-site inspection. CEO Brackett agreed.

Hewlett stated that St. George's Map 3, HVBH (High-Value Bird Habitat) is in the tidal waterfowl and wading bird habitat. Balano stated that is addressed in the DEP report. CEO Brackett stated he did not receive all the pages of the DEP report and sent the Planning Board what he had. Chair Cox recommended they see the complete DEP permit and how DEP addressed those concerns before moving forward with the application. Balano said he will see that Brackett gets a complete and signed copy of the 12-page DEP report by September 1, 2020.

An on-site inspection has been scheduled for August 31, 2020, at 5 p.m. 43 McCoy Road, Wheeler's Bay Oyster Company, Spruce Head.

Hewlett asked if Balano has a dwelling on this site and if he lives at this site. CEO Brackett said Balano lives there.

Chair Cox asked if Balano can drop a buoy to mark where the float will be. Balano said he will do that, and CEO Brackett noted low tide will be 4:30 p.m.

There was no further business to come before the Board. On a motion by Letourneau, seconded by Brown, it was voted 5-0 to adjourn the meeting at 8:01 p.m., and the Planning Board went immediately into the Ordinance Review workshop which ended at 8:09 p.m.

Respectfully submitted,

Marguerite R. Wilson
Planning Board Recording Secretary