

TOWN OF CUSHING
SELECTMEN
Minutes of Meeting
November 28, 2016
Cushing Community Center

Selectmen Present: Chairman Alton Grover, Laurie Haynes, Daniel Staples, Martha Marchut and Heidi Alley

Selectmen Absent: None

Staff Present: Lisa Young

1. Call to Order: Chairman Alton Grover called the meeting to order at 6:03 P.M. and the Pledge of Allegiance was recited.

2. Approve and Sign the Warrant:

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marchut, to approve Warrant #43 & #44
Carried 5-0-0

3. Approve Minutes of 11/14/16:

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Laurie Haynes, to approve the minutes of the 11/14/16 meeting.

ACTION: Selectman Laurie Haynes amended the motion, seconded by Selectman Heidi Alley, to add that it was said that Kristin Collins will be at the next meeting.
Carried 3-1-1 Martha Marchut abstained due to not being at that meeting and Daniel Staples opposed.

4. Additions or Changes to the Agenda:

A Cushing family has asked to use the gym area for a memorial service for their son. The Selectmen approved the use of the gym.

Selectman Daniel Staples announced that he will attend the Knox County Meeting this Thursday at 6:00PM. He will inquire about the animal control position.

Planning Board member, Robert Ellis, asked to make a comment in regard to the letter that was received from a potential buyer of the Fisher property. He noted that any use change in the shoreland zone should come to the Planning Board; he stated that the Board of Selectmen are putting themselves out on a limb.

Daniel Remian, Chairman of the Planning Board stated that the property in question is in violation today and that should be addressed.

5. Unfinished Business:

6. Comments from Citizens: None

7. Enter into executive session pursuant to 1M.R.S.A § 405(6)(E) consultation with legal counsel

ACTION: Chairman Alton Grover made a motion, seconded by Laurie Haynes, to enter into executive session pursuant to 1 M.R.S.A. § 405 (6)(E) consultation with legal counsel at 6:15PM.
Carried 5-0-0

ACTION: Selectman Daniel Staples made a motion, seconded by Martha Marchut, to enter back to the regular scheduled meeting at 6:47PM.
Carried 5-0-0

Attorney Kristin Collins asked if the applicant felt comfortable talking about the proposal without his lawyer present; which he said he did.

Attorney Kristin Collins inquired if the buyer was still under contract to purchase the property; which he said he was. She noted that the proposal has some facts that may be disputed by the Code Enforcement Officer and if the town were to do anything with the proposal, it would be in the form of a consent agreement. She said that basically it would say that the town acknowledges certain things are happening, and that the town will allow those things to happen and will not prosecute the buyer, but he will have to agree to all the things that are outlined in the consent agreement which would include those facts that the town disputes.

Attorney Collins asked the buyer if the sale was contingent upon an approval from the town and he said it wasn't. She inquired if it would make him more comfortable having something in writing and he noted that it is not necessary but it would be nice to have a verbal understanding that we are all in agreement before the closing. He is interested in finding out what the town considers appropriate and what is not appropriate.

Attorney Collins explained that the difficulty with the property is that the studio can not be a residential dwelling unit because it is in resource protection and converting it into a residential dwelling unit can be done very easily. She noted that it is not just the town but the State Department of Environmental Protection that enforces this as well. She explained that if there is cooking, sleeping and a toilet facility it is considered a residential dwelling unit. A discussion ensued on the various scenarios to keep it from being considered a residential dwelling unit.

Mr. Windzio thought that he would remove the composting toilet, and put a portable toilet outside the 250, so that would leave a cooking and sleeping facility which would comply. His long term plan is to build a bunk house and bathroom outside the 250, if that is what is approved by the town, but that would probably not happen for a couple of years.

Attorney Collins explained that the concern the town has is that the ordinance states if the structure has eating, sleeping, and a toilet facility present it is a residential dwelling unit. It doesn't matter if the toilet is a portable toilet versus inside the studio it is still served by a toilet, so all three components would be met. If the town were to allow this situation in the resource protection zone it would be setting a precedent. This is a concern for the town as well as the DEP. She explained that the DEP may take a different point of view, and the town can talk to them about it as well as his lawyer. If the DEP can convince the town that it is ok maybe the town will feel differently about it. In regard to the consent agreement the town can't write something in it that would be in violation of the town ordinance. Attorney Collins said if Mr. Windzio were to take out the toilet and only use the studio for day use, until the bunk house is built, the town probably would be ok with it. An offsite toilet is not the cure for the problem.

Mr. Windzio was a little confused because he thought by taking out the composting toilet that would satisfy the ordinance. One of his other concerns he has is due to hearing about the history that a neighbor complained that someone was using the studio as a residential unit. He is afraid that if he takes the sleeping part out, and a light is left on some night that a neighbor may complain, so suddenly he has the CEO coming by every week. He doesn't want to be constantly dealing with issues that someone may think he is making the studio into a residence. His hope is to come to an agreement to avoid this sort of thing.

Attorney Collins asked if he would be interested in an agreement to leave the studio as is but only use it for days in support of construction. Mr. Windzio would like to have two of the three components in the studio. She explained that the Board will need to have two of the three components rearranged. She said that the Board may feel differently if Mr. Windzio can get a letter from DEP stating it is ok, but the Board will not be spending the towns' money to figure that out. If Mr. Windzio can get a letter to the Board from the DEP maybe they will re-evaluate, but at this time the Board is not going along with the agreement if it includes the portable toilet outside the 250.

Mr. Windzio inquired if he could get a sentiment from the Board on how they feel about what was discussed. The Board felt at this time it is premature to give any opinion. Mr. Windzio stated his hope is to put this behind us in some written way. Attorney Collins said the safest way would be to not use the studio in anyway while he is building his other structure other than day use. She inquired if he gave any thought to moving the structure. He said he did look into it but he didn't see that it was possible.

Planning Board Chairman, Daniel Remian, said that Scott Bickford found a fellow that could move the building with a horse and pulley for about \$6,000 and David Glidden had Art Henry Crane Services look at it and they thought they could move it with their crane for about \$7,500. There also would be a need to cut some trees so the CEO would have to be consulted. At this point Mr. Windzio didn't feel it was feasible. He will contact DEP and get back to the town.

Planning Board Member, Robert Ellis, stated he is concerned by this whole thing, and he would like to give the Board his opinion. He feels this procedure is not appropriate. There are any number of properties in town where a prospective buyer could come in after this knowing that they could bring a proposal to the Selectmen instead of the Planning Board to influence some kind of agreement to circumvent the procedure that the State laid out who is supposed to review changes and uses such as this is a bad idea; even if everyone's intentions are good. He noted that the Planning Board is being watched by the DEP and other landowners around this property. There has been a long standing violation with the current owner. He feels that the consent agreement should be with the current owner not to be influenced by a proposal from a prospective buyer to grease the skids in order to get around the ordinance. He stated it is troubling to him. He noted it makes the Planning Board look bad and it makes their decisions questionable.

The Planning Boards original suggestion was to make the building come into compliance with the ordinance by moving it. He said there are several areas on the property that it could move to. He stated that this is the only real way to solve the problem. All the suggestions are getting away with conditions that are in the ordinance and it is being offered to a potential buyer not the actual owner. Mr. Ellis is very concerned.

Attorney Collins stated that this is a bit of an extraordinary situation in that this is an ongoing potential violation. She explained that the town has been back and forth on this issue, and has been in court, so the thought is to always try to resolve those things. She noted that she is not saying that the Planning Board would not issue permits on this.

Bob Ellis's other concern was that this issue was not on the agenda. He said the Board has a procedure that they voted on not to act on any items that are not on the agenda. He feels it is being snuck in. He went on to say that there are interested parties that deserve to know what is being discussed.

Both Selectman Haynes and Chair Grover said it was on the agenda under executive session and they did not act on anything they are just having a discussion. Selectman Haynes explained that legally she didn't think the Board even has to have an agenda. Attorney Collins agreed.

Mr. Ellis stated it didn't say anything about the Fisher property on the agenda and asked the Board to look back and see what they voted on in the past about putting items on the agenda. He also mentioned after the executive session they summarize what is being discussed. Selectman Haynes disagreed stating that they need to protect the person if it is personnel issue and to protect the town on legal issues. Mr. Ellis noted that no one expects the results of an executive session to include the details of the towns' attorney, but people want to know when issues are being taken up by the Selectmen, like tonight, it should have been on the agenda. He feels it is not transparent.

Selectman Martha Marchut noted that this topic was planned on being discussed because Mr. Windzeo planned to attend.

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Heidi Alley, to enter back into executive session pursuant to 1 M.R.S.A. § 405(6)(E) consultation with legal counsel at 7:34 PM.
Carried 5-0-0

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marchut, to enter back into the regular scheduled meeting at 8:01 PM.
Carried 5-0-0

ACTION: Selectman Laurie Haynes made a motion, seconded by Selectman Heidi Alley, to take \$500.00 out of incidentals to cover the overage in the Norton Cemetery and Ancient Cemetery Accounts and for the tree removal at the Ancient Cemetery.
Carried 5-0-0

8. Adjournment:

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marcht, to adjourn at 8:15PM
Carried 5-0-0

Respectfully submitted,

Lisa M. Young
Town Clerk