

APPROVED 6.12.2017

TOWN OF CUSHING
BOARD OF
SELECTMEN

Minutes of Meeting

May 22, 2017
Cushing Community Center

Selectmen Present: Chair Alton Grover, Martha Marchut, Laurie Haynes, Heidi Alley, and Dan Staples

Selectmen Absent: none

Staff Present: Kate Hoyt, Deputy Municipal Clerk

Public Present: Attorney Kristen Collins, as well as Cushing Planning Board members Dan Remian (Chair), Bob Ellis, and Frank Muddle

1. Call to Order: Chair Alton Grover called the meeting to order at 6:00 P.M.

2. Pledge of Allegiance was recited.

3. Approve and Sign the Warrant:

ACTION: Selectman Laurie Haynes made a motion, seconded by Selectman Martha Marchut, to approve Warrants 22 and 23.

Motion Carried 5-0-0

4. Approve Minutes of the 05/08/17 Meeting:

ACTION: Selectman Dan Staples made a motion, seconded by Selectman Laurie Haynes, to approve the Minutes of the 05/08/17 meeting as amended.

Discussion: The Selectmen commented on the portion of the minutes that dealt with the Waldoboro Transfer Station. If Friendship goes along with the plan, does Cushing have to? (The plan is to create a three-town Joint Advisory Committee to the Waldoboro Transfer Station. The makeup of this Board has not been decided yet, but it could operate independently of the respective Boards of Selectmen while including one Selectman from each Town.) The answer was 'yes.' Upshot: Nothing has been decided, and the issues will be revisited.

Motion to Approve 5/8/2017 Minutes Carried 5-0-0

5. Additions and Changes to the Agenda:

5a. Fixing the Boiler in the Town Office:

Discussion: [See discussion under "New Business," below.]

5b. Request to Go Into Executive Session at the End of the Meeting:

Selectman Dan Staples asked to have on the agenda that the Selectmen go into Executive Session at the end of the meeting, pursuant to M.R.S.A. §405(6)(E), consultation with legal counsel. (No motion necessary.)

5c. Culverts on Spear Mill Road:

Select Board Chair Alton Grover said that culverts on Spear Mill Road needed repairing.

Discussion: [See discussion under "New Business," below.]

5d. Discussion of Legal Document:

Select Board Chair Alton Grover said that a legal document had arrived in the Town Office, sent by Kristi Niedermann, who donated Fales Field as Good Neighbors Park.

Discussion: [See discussion under "New Business," below.]

6. Unfinished Business:

6a. Review the Revised Consent Agreement for Heinz Windzio, Map 028, Lot 018-1.

ACTION: None taken.

Discussion: Selectman Martha Marchut commented that there were people from the Cushing Planning Board in attendance, and she asked that they be allowed to speak during the main meeting, regarding review of the Consent Agreement, before the Selectmen went into Executive Session. Dan Remian, Planning Board Chair, spoke first. He made specific reference to instances of what he saw as unclear/manipulable wording in the Consent Agreement as it stood. Remian said that, in the latest version of the Consent Agreement, there were terms used that could mean different things. He asked that these terms be clarified. He said that, since last November, Windzio's attorney's intent and use of language were what he was concerned about. [Remian's comments are in italics. See Appendix to find items 1-11 in context, marked on pp. 1-2 of the most recent Consent Agreement.]

- (1) "as constructed" – *When studio was constructed, (see property card), there was no deck.*
- (2) "wrap-around deck" – *Now there's a wrap-around deck—and a porch.*
- (3) "living space" – *What do they mean by living space?*
- (4) "use of the studio" – *Strike "use"; use is irrelevant.*
- (5) "residential dwelling" – *What do they mean by this, how does it differ from the auxiliary?*
- (6) "deck" – *Add "and porch."*
- (7) "which will return the status of the studio structure to a conforming structure" – *It will continue to be in violation. The studio was never a conforming structure.*
- (8) "living space" – *Again, what does this mean?*
- (9) "occupied" – *Define "occupied." He has a broad sense of what he'd like to do, there.*
- (10-11) "toilet" – *Put a period after this word and leave out "and sleeping facilities" and the rest of the paragraph. Everything else about him getting a permit is irrelevant because it is not allowed in our ordinance.*

Selectman Dan Staples concurred on (8) in particular, recalling that the original use of the studio was as day use only.

Bob Ellis of the Planning Board then spoke, encouraging the Board of Selectmen to reject the Consent Agreement altogether. A problem with it, according to Ellis, is that there is language about "conformance." He felt it would be a mistake to leave that language in, because, in Cushing's ordinance, "conformance" pertains to grandfathered structures, and the studio in question is not one; it was built

after the ordinance was enacted—making the Windzio case an issue of violation, not of bringing something into compliance. Ellis then said he still hears people referring to this Consent Agreement as somehow involving “estoppel.” “Estoppel,” he felt, was another specific term that was intended to provide relief to property owners who had received improper permits or been advised inappropriately by law enforcement or town officials. In this case, before Windzio bought the property, he knew there were violations. All issues were listed up front before the purchase, except for the deck. At this point, Ellis said, Windzio should have been told by the Town that he would be responsible for these violations. This argument about avoiding estoppel, if the case should go to court, does not apply in this case, Ellis said. He said that Maine Municipal encourages towns to reverse any lax enforcement of ordinances, and the best time to do so is when the property is changing hands. “All applications should be treated the same, starting now. You should not be able to negotiate your way out of a violation.”

Dan Staples thought the Board of Selectmen should not be overly concerned with the cost of a lawsuit now. Even if the Town lost, he felt they should spend money now, to set the correct precedent and get the ordinance language and the issues clear, to avoid spending even more in the future. Attorney Kristen Collins had said, previously, that the Windzio case would not set a precedent.

Selectman Laurie Haynes asked Remian to present to her fellow Selectmen that her husband, Bryan Haynes, was on the Planning Board with Hamilton Boothby, back when the original permit for the studio was issued. She wondered if she should recuse herself from further discussions or decisions regarding this property, whether it was a conflict of interest. Attorney Kristen Collins said there was no conflict of interest. Selectman Heidi Alley asked about the appearance of conflict and was told there was none. Planning Board member Frank Muddle, in the audience, commented that, in any case, Bryan Haynes had not been Laurie’s husband at that time.

7. New Business:

7a. Sign Referendum Warrant for RSU #13.

ACTION: Signed around.

Discussion: None.

7b. (Added) Motion to Appropriate Funds to Fix the Boiler in the Town Office:

ACTION: Selectman Dan Staples made a motion, seconded by Selectman Laurie Haynes, to accept an expenditure in the amount of \$1,330.00 to fix the boiler.

Discussion: Select Board Chair Alton Grover explained that the boiler needed to be fixed, that the cost he had been quoted by Maritime Energy was \$1,330.00. Dan Remian, in the audience, asked if the Town had a maintenance contract. Alton Grover said that the boiler was too old, and was not covered.

Motion Carried 5-0-0

7c. (Added) Culverts on Spear Mill Road

ACTION: None taken at the meeting.

Discussion: Select Board Chair Alton Grover discussed several culverts that need repairing, what the problems were, and how they should be fixed. He put it out to bid to fix two culverts.

7d. (Added) Legal Document Pertaining to Good Neighbors Park:

ACTION: None taken at the meeting.

Discussion: Select Board Chair Alton Grover said that a legal document had arrived in the Town Office, sent by Kristi Niedermann, who donated Fales Field as Good Neighbors Park—a document pertaining to the donation of property worth more than \$5,000.00—from attorney Stanley Patton out of Waldoboro. Town

Attorney Kristen Collins looked it over during the meeting and commented that reference was made in the document to "vacant waterfront lot." She said that the document should be returned for blanks to be filled in—including Map and Lot numbers. Selectman Heidi Alley asked what value the Waldoboro attorney was using. Collins said this was not important, since the Town was not attesting the value.

8. Comments from Citizens:

Frank Muddle addressed the Selectmen in his capacity as representing a group of Cushing property owners who are dedicated to helping Good Neighbors Park develop. Kristi Neidermann, who donated the land for the park, is a member of this group. Muddle reiterated that group's interest in helping the Town by donating funds to the park. He suggested appointing a Town committee. Selectman Laurie Haynes invited him to put together a proposal for the Selectmen to look at. Selectman Heidi Alley concurred. Martha Marchut wondered if a motion were required. No motion was made, and Dan Staples pointed out that the language was in the deed and that the funds should go through the Town. Muddle said he wanted to clarify that donations given as park maintenance are tax-deductible. People ready to donate would like to take a tax deduction. A Parks Committee would make fundraising a lot easier. Martha Marchut suggested explicitly stating that a person on the Board of Selectmen could be a liaison to the Parks Committee, as with other Town Committees.

---Executive Session---

The Select Board entered into Executive Session, pursuant to 1 M.R.S.A. §405(6)(E), consultation with legal counsel, at approximately 7:00. A motion was made by Selectman Heidi Alley and seconded by Dan Staples, to go into Executive Session.

Dan Staples motioned, and Martha Marchut seconded, to enter back into the regularly scheduled meeting at 8:17 p.m.

---The Selectmen rejoined the main meeting at 8:17 p.m.---

ACTION: Martha Marchut made a motion, which Staples seconded, regarding discussion in Executive Session. Motion to authorize Attorney Kristen Collins to add "porch" to every instance of "deck" in the Consent Agreement with Windzio; and to require the after-the-fact permit for the deck to be filed within one year of the date of the agreement. Windzio has seven days to accept this Consent Agreement; the Board will not negotiate any further.

Discussion: Attorney Kristen Collins agreed to send around changes via email to Selectmen.

Motion Carried 5-0-0

9. Adjournment:

ACTION: Selectman Heidi Alley made a motion, seconded by Selectman Martha Marchut, to adjourn at 8:20 p.m.

Motion Carried 5-0-0

Respectfully submitted,

Katherine Hoyt,
Deputy Municipal Clerk,
Town of Cushing

To accompany
Minutes of
5/22/2017
meeting of
BOS.

APPENDIX

CONSENT AGREEMENT
Pleasant Point Road
Town of Cushing, Maine

This document is a consent agreement made between **Heinz Windzio** of Bolton, Massachusetts, ("Property Owner"), and the **Town of Cushing**, a municipal corporation located in Knox County, Maine ("Town").

WHEREAS, Property Owner is the owner of real property located on Maple Juice Cove off Pleasant Point Road in Cushing, Maine, further identified on Town Assessors' Maps as Map 28, Lot 18-1, which he purchased on November 30, 2016 by the deed recorded in Book 5115, Page 36 of the Knox County Registry of Deeds ("Property");

WHEREAS, on February 16, 2002, the Cushing Planning Board approved the construction of a 20 foot by 20 foot "studio" on the Property in the RP District of the Cushing Shoreland Zoning Ordinance at the request of the former owners. The studio was a structure accessory to an allowed use. The allowed use was a residence located outside of the Shoreland Zone on Stones Point Road. At the time, the former owners owned a larger parcel of land.

WHEREAS, the studio as constructed included a wrap-around deck not described in the Planning Board permit.

WHEREAS, on November 16, 2015, the former owner of the Property sold a 3.23 acre portion of her larger parcel with the residence on it, leaving the studio as the only structure on the remaining 2.56 acres that comprise the Property;

WHEREAS, on August 26, 2016, after an inspection of the Property, the Town Code Enforcement Officer wrote a letter to the former owner expressing concerns about the possible use of the studio structure in violation of the 2002 Planning Board approval;

WHEREAS, the Property Owner ultimately wants to use the studio structure as a structure accessory to a new residential dwelling unit to be constructed on the Property. Before the new residential dwelling unit is completed, the Property Owner wants to be able to use the studio structure for a limited period of time as living space with any cooking facilities located outside of the Shoreland Zone; ③

WHEREAS, the Property Owner and the Town wish to resolve an ongoing dispute and provide clarity regarding the status and legality of the use of the studio structure; and ④

WHEREAS, the Property Owner plans to build a new residential dwelling unit in the next two years and seek Planning Board approval of the deck, which will return the status of the studio structure to a conforming structure accessory to the allowed residential use of the new residential dwelling unit to be used as additional living space; ⑤ ⑥ ⑦ ⑧

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

1. The Property Owner acknowledges that the studio may not contain cooking, sleeping and toilet facilities that would make it a "residential dwelling unit" as defined by the Cushing Shoreland Zoning Ordinance.
2. The Town agrees that the existing 20 foot by 20 foot studio structure on the Property will be allowed to remain on the Property, may be occupied in its current location, and may contain a composting toilet and sleeping facilities. The studio shall not be used for sleeping for more than 20 nights per year until the new residential dwelling unit is constructed. The existing composting toilet or a similar replacement without plumbing will be used for the toilet facilities until the new residential dwelling unit is constructed. ⑨ ⑩ ⑪
3. The Property Owner shall remove all cooking facilities from the studio, including the refrigerator, kitchen sink and related plumbing upon the signing of this Agreement. The

3. The Property Owner shall remove all cooking facilities from the studio, including the refrigerator, kitchen sink and related plumbing within 30 days from the signing of this Agreement. The Property Owner agrees not to store, cook or prepare food in the studio structure in accordance with the definition of "accessory structure" found in the Shoreland Zoning Ordinance. The Property Owner may set up a platform tent outside of the Shoreland Zone to be used for food storage, cooking and preparation until the new residential dwelling unit is constructed.

Deleted: upon the

4. Until a residential dwelling unit is lawfully constructed on the Property as described in paragraph 5 below, the Property Owner agrees to allow the Code Enforcement Officer entry to and inspection of the Property and the studio structure upon 24 hours' actual notice. The Property Owner agrees to keep the Town notified of any change in his telephone number or mailing address.

5. The Property Owner agrees that within two years of this agreement, he will obtain all necessary permits for and will construct a residential dwelling unit on the Property in accordance with all municipal ordinances. The septic system for the new residence will be located outside of the Shoreland Zone in full compliance with all Town of Cushing and State of Maine codes and ordinances. This deadline may be extended at the discretion of the Select Board upon the request of the Property Owner due to unforeseen circumstances. If the deadline expires without this condition being met, then the allowed use of the studio structure will revert back to the studio use approved in 2002.

6. No water supply shall be connected to the studio nor shall any wastewater be discharged from the studio without a properly approved plumbing permit from the Town's Local Plumbing Inspector, in accordance with all applicable ordinances, laws and regulations. At or after the time the permit application for the permanent dwelling unit is filed, the Property Owner may also apply to the Town's Local Plumbing Inspector to (a) to replace the composting toilet with plumbing for a flush toilet, and/or (b) to add a small bathroom single sink in the studio bathroom

in full compliance with applicable law, both of which shall be pumped into the new full septic system outside of the Shoreland Zone described above if such connection is approved by the Local Plumbing Inspector.

6. ~~Property Owner shall apply for an "after-the-fact" building permit from the Planning Board for the deck on the studio, no more than 30 days from the date of this agreement. The Planning Board will review the application in accordance with the Cushing Shoreland Zoning Ordinance review standards. If the application is denied, and the denial is upheld after any appeals are exhausted, then the deck shall be removed before the studio may be used again.~~

Deleted: The deck on the studio may remain in place until the Property Owner applies for

Deleted: no later than the time the Property Owner applies for a permit for the new residential dwelling or two years

Deleted: , whichever occurs sooner

7. The Agreement runs with the Property and benefits all future owners of the Property. Once the residential dwelling unit and a full septic system are completed in accordance with all codes and ordinances, this agreement may be recorded in the Registry of Deeds.

8. If Property Owner fails to comply with any provision of this Agreement, the Town of Cushing may seek any remedy available pursuant to the Shoreland Zoning Ordinance and Maine Law in order to correct any resulting violation.

9. Property Owner agrees to pay to the Town of Cushing the amount of \$3,000 to defray the Town's legal fees in reaching this Agreement, the Town's receipt of which is hereby acknowledged.

The Town of Cushing Select Board approved this agreement at its meeting on May __, 2017.

May __, 2017

PROPERTY OWNER:

Heinz Windzio

May __, 2017

TOWN OF CUSHING, by its Select Board:

STATE OF MAINE
COUNTY OF KNOX

May __, 2017

Alton Grover, as Chair of the Cushing Select Board, personally appeared before me and acknowledged that his signature on this agreement was his free act and deed.

Notary Public/Maine attorney

print name

commission expiration date