

TOWN OF CUSHING  
BOARD OF SELECTMEN  
Minutes of Meeting  
November 13, 2018  
Cushing Community Center

**Selectmen Present:** Chair Alton Grover; Selectmen Dan Staples, Laurie Haynes, Martha Marchut, and Corey Jones

**Selectmen Absent:** none

**Staff Present:** Cushing Treasurer/Town Clerk Lisa Young

**Public Present:** nonresident Mike Campbell, bidder on foreclosure property at 41 Sheep Point Ln.

**1. Call to Order:** Chair Alton Grover called the meeting to order at 6:00 P.M. A quorum was determined.

**2. Pledge of Allegiance** was recited.

**3. Approve and Sign the Warrant:**

**ACTION:** Selectman Dan Staples made a motion, seconded by Selectman Corey Jones, to approve 2018 Warrants 41 and 42.

**Discussion:** none

**Motion Carried 5-0-0**

**4. Review and Approve Minutes of the 10/22/18 Meeting:**

**ACTION:** Selectman Laurie Haynes made a motion to approve the minutes of the October 22, 2018 meeting as amended. Selectman Dan Staples seconded.

**Discussion:** minimal

**Motion Carried 4-0-1** [Martha Marchut abstained, not having been present at the 10.22.2018 meeting.]

**5. Additions and Changes to the Agenda:**

**5a. Transfer Station Trucks**

**ACTION:** none taken

**Discussion:** Selectman Dan Staples wondered if the three-town transfer station were considering a purchase of tractors and trailers. Alton Grover commented that the transfer station had lost their hauler. Dan Staples commented, and Alton Grover agreed that, due to maintenance costs, it would be better for the transfer station to hire trucks than to own them. Corey Jones said that a hydraulic pump would be required, if the center were to own its own truck. Corey and Alton said that the transfer station had decided to put haulers out to bid.

## 5b. [Additions and Changes, cont.] Fire Station Account

**ACTION:** Dan Staples motioned, and Martha Marchut seconded, to take money out of the Town building account to cover any Fire Station expenses for the rest of the year, as needed.

**Discussion:** There is currently only 86 cents in the Fire Station account. Selectmen approved the transfer of funds on an as-needed basis.

## 6a. Discuss Foreclosure Bids

**ACTION [1]:** Selectman Martha Marchut made a motion, seconded by Dan Staples, to contact Town attorney Kristen Collins with the following questions:

- First, does Attorney Collins advise the Selectmen to send a letter to Steven and Judith Zizza, plaintiffs in a Writ of Execution filed in 2013 (KCRD Book 4742, P254) against Laura Dash, then owner of Town-foreclosed property at 41 Sheep Point Lane (Map 25, Lot 58)? The letter would ask these plaintiffs to accept an offer by the Town whereby, if Cushing pays them the roughly \$3,800.00 owed to them by the defendant, they will sign a document stating their willingness to give up their right to pursue the matter further;
- Second, could Attorney Collins clarify the nature of Writs of Execution in general—and, specifically, could she tell the Selectmen whether these judgments encumber individuals or properties; and
- Third, depending on the answers to the first two questions, should the Selectmen open bids at their November 26<sup>th</sup> meeting, or wait the previously-suggested three months (or 30 days) to make up for having failed to notify the Zizzas of the Town's intent to, (a), place a 2015 lien against the property, back in 2016, and (b), foreclose on the property at the end of 2017 for lack of payment of municipal taxes?

**Discussion:** Martha reported that she had spoken with Town Attorney Kristen Collins about a Writ of Execution that had been brought against the former owner of property that had been foreclosed on by the town (foreclosed in December, 2017, and lien-ed 18 months earlier, in 2015). Martha told the Selectmen that a potential bidder had discovered the existence of this writ while working with an attorney. According to Collins and to an MMA attorney, the Town, to rectify its oversight, is now required to give the plaintiffs, Steven Zizza and his now-ex-wife, Judith Biscaia-Zizza, a three-month window to pay the outstanding taxes on the property and resume efforts to collect on their debt. Following this protocol would mean that the Town has to delay the bidding process: At the very least, bids could not be opened at the current meeting. In fact, Martha reported, Collins had advised the Selectmen that it would be cleaner to reject all bids—there turned out to have been two bids submitted—and then, in three calendar months, depending on Zizzas' actions, resume the bidding process at that time.

Selectman Corey Jones said he didn't think the Selectmen should reject the bids. He said that the \$3,800.00 that was owed (the amount of the writ) was against the person [i.e., Dash]—against "all her properties." He said that the writ did not directly reference the particular property that the Town had foreclosed on. In the interests of the costs associated with the bidding process, Corey suggested the Selectmen not delay the bidding. Instead, he proposed that the Selectmen open the bids, pay off Steven and Judith Zizza the amount they sought, and move on from there. Martha called for a motion.

**ACTION [2]:** With one motion already on the floor, Selectman Dan Staples made a further motion, seconded by Martha Marchut, to reject the bids that had come in on the foreclosure property.

**Discussion, continued:** Martha quoted Attorney Kristen Collins as saying that making the bidders wait the process out was unfair to them, as their financial circumstances might change in three months. She said that if the Town provides the three-month window to writ plaintiffs, as the attorney suggests would be appropriate, the timetable would not be what the Town had told the bidders to expect. She said the Selectmen don't have to give Zizzas this option, but that it was the Selectmen's attorney's recommendation. Selectman Corey Jones was concerned that the Selectmen might run the advertisement again in three months and get no bids on it at all. Martha said that then the bidders ought to be given the option of withdrawing their bids. Laurie Haynes agreed.

Dan Staples thought the Selectmen should go with what Attorney Collins had said. "What do we have a lawyer for, if we're not going to pay attention to what she says?" He was in favor of revisiting the issue after proper notice had been given to Zizzas. He did not think there would be any problem getting bids on a piece of waterfront property at a later date. He said that worrying about costs to bid in three months might not be an issue, if Zizzas ended up with the property.

Corey Jones pointed out, and Alton Grover agreed, that Zizzas could not end up with the property, that this was not how the process worked. Treasurer Lisa Young commented that the property would go back to the previous owner (Laura Dash) for the necessary period of time. Corey said that, considering the dollar amounts involved, it was unlikely that Zizzas would pay the outstanding taxes (an amount nearly equal to the amount of their judgment) just to pursue payment on that small judgment. Dan Staples suggested the Selectmen wait out the time period and resume dealing with bids at the proper time.

Select Board Chair Alton Grover wondered what would happen if the Town were to accept one of the bids at the current meeting and pay off the writ out of the proceeds of the bid that was accepted. Martha said, "We have to give the Zizzas the option of doing that." Alton said, "So, if they don't want to do it, why don't we do it?" Martha thought that was a question for the attorney. Corey said that, since the foreclosure ad had been run twice, he felt sure that Zizzas were aware of Dash's property being for sale. He added that, legally, the Town is not required to give Zizzas notice. Martha said, "How do we know what the Zizzas have seen?" Corey answered that [Tax Collector] Kate Hoyt had spoken with one of the plaintiffs. Corey said he had been to the Knox County Courthouse and seen that the writ brought by the Zizzas against Dash was against the person, Laura Dash, and not against her property that had later been foreclosed on. Additionally, Corey said he had spoken with people who deal with this sort of thing all the time and they had told him that, since the Town had issued a Quit Claim deed, the Town was covered. "We're technically not responsible, [even] if there are ten liens—that's what a Quit Claim deed is for." He expressed surprise that the Town's attorney had not realized this.

Martha said that the advice to follow up with Zizzas had originally come from MMA, and that Collins had said MMA's interpretation was very broad but that she (Collins) agreed with it. Treasurer Lisa Young added that MMA had said theirs was a conservative stance, but she (Lisa) thought that this might be a good thing, in order to protect the Town.

Selectmen discussed the period of time required. Martha said she understood that the Selectmen had to give the plaintiffs the amount of time they would have had, had they been properly notified. The consequences of holding onto the bids were discussed. Whether or not to accept additional bids came up (the Selectmen agreed that they would not do this). Corey thought someone should go talk to Zizzas and ask, "If we pay you off, will you relinquish this?" Dan Staples wondered if the Selectmen could take Town money and pay off a lien. Alton Grover said no Town money would be taken; the proceeds from the highest bid would be used to do this, if it were done.

Corey added that the porch is falling off the house. He worried that, if the place sits as it is for three months, and it's advertised, people who come to look at it might fall through it. Alton Grover commented that the building was insured. Corey said it still might involve a lawsuit.

Laurie Haynes raised her hand and was recognized. She felt that it was only fair that the Selectmen set up something that said "You bid; [the additional window] is going to close on this date; and whoever is the highest bidder gets it." Alton Grover agreed. The Selectmen said that, since they hadn't known about the additional timeline, the two bids should be preserved as they are, sealed until the proper moment comes to open them.

Danny agreed that the Selectmen had not known, but thought they should go with what their attorney and MMA advised. Laurie said that right is right, and was concerned that the people who had bid should be treated fairly—that, at the end of the process, the Town should stand by its word. Corey said again that having issued a Quit Claim deed to sell the property would protect the Town from further problems. Corey reiterated that he had had friendly conversations with people he knew who had clarified the issues for him, and that he had been to the Registry to investigate for himself, and the Town is covered. He said if the Town had gone with the first round of bids, the highest bidder would now be paying off this writ. Martha and Lisa agreed that, technically, the Town should have notified every creditor and Lisa added that, going forward, "we will be." Corey didn't see the necessity of waiting. Martha repeated that the Zizzas needed to be given an opportunity, according to the attorneys.

Laurie said they should open bids that night and then give the plaintiffs three months to act. Martha said, "You can't open bids on something that is not eligible to be bid on." Laurie said she understood what Martha was saying, that in theory, the property could end up, after three months, not Town property at all. Martha concurred: "As unlikely as that sounds [it is a possibility]."

More discussion about rejecting bids versus holding them. Corey again suggested typing up a letter, having Treasurer Lisa Young notarize it, taking it to Zizzas, and asking them to sign off on their \$3,800.00, which would be paid to them out of the proceeds of the sale. That way, bids could be opened at the Selectmen's next meeting. Corey was concerned that attorneys complicate everything. He said they all have different theories and although they are smart, common sense should come into it. He reminded the Selectmen that the Town had advertised a Quit Claim deed, so, regardless of what the lawyers said, the Town had offered the property to the public, "and now we're saying they have to wait three months."

Dan Staples said, "Because we made a mistake. Now we know that we have to look for that in the future." Alton thought someone should at least go talk to the Zizzas. Laurie agreed to talk with Judith. Alton thought the Selectmen should tell the Zizzas what the options are and find out what they want to do first. Martha thought the Selectmen should clear it with somebody before presenting the Zizzas with a letter. Revisited the improbability that Zizzas would want their three months.

[Final wording of motion was drafted, at this point. See the three bullet points, above.]

Corey commented that time is money. He said that whoever had bid, the bidders should not change. Dan Staples thought an official letter to plaintiffs ought to come from the Selectmen. Corey said Laurie might advise Zizzas that a letter was coming, and ask if they would be willing to accept [the sort of agreement outlined in bullet point #1 of the motion]. Some discussion of logistics.

Alton Grover commented that, if the issues could be worked out, bids would be opened at the next meeting, November 26<sup>th</sup>. Dan Staples withdrew his motion to reject all bids.

### **Motion [ACTION #2] Withdrawn From Consideration**

The Selectmen discussed that there were two bidders on the property. One of them, Mike Campbell former Selectman in Owls Head, was in the audience. Alton asked him if he wanted to withdraw his bid, and Mr. Campbell said no, but that he'd like to have something in writing that the way of dealing with the bids was what he thought it was going to be—that no one else would be able to bid on the property, in three months. [ACTION ITEM: Draft this letter to Mike Campbell?—KEH] "I'd like to know that the process is going to go forward. I, too, went to the Registry, and did my homework, and the issue is with the woman and not with the property, so I don't understand why that is a factor. The Town owns the property. In my opinion, you folks have gone through all the process you need to go through." He did not want to wait three months but was willing to do that if that was what it took.

Alton wondered if Kristen Collins knew that the writ was on the person and not the property. Lisa Young commented that MMA had advised that all writs be treated in this way. Martha thought Collins had been aware of this.

Alton commented that Corey could notify the other bidder. Alton said he knew who the other bidder was, because he had shown them the house.

At the end of the discussion, Corey commented he had talked with people. Dan said he was uncomfortable with just talking to people, unless those people were lawyers. Corey said that it was often in lawyers' best interest to draw things out. Dan said maybe we shouldn't have one, then. Corey said, no [of course the Town should have a lawyer, but that] "lawyers are not in the business to be your friend." Dan said we have to do things legally, not by what some friends say. Corey said that one of the people he had talked to was his stepmother, who has been in the real estate business and knows a lot about the issues. She knows the legal side, she's sold property—she knows. Corey had found out from his stepmother what a Quit Claim deed was. Followed more discussion of Quit Claim deed particulars. Laurie said the Selectmen had come up with the best solution: Martha now had three good questions to ask the attorney.

Under [7c] below, Corey commented that his stepmother was the other bidder on 41 Sheep Point Lane, and that he had not known that his stepmother was going to place a bid. Dan Staples said, "Now we all know." Corey's stepmother told Corey she had thought she had placed the high bid and wanted the money to go to better the Town.

**Motion [ACTION #1] Carried 5-0-0**

## **7. New Business**

### **7a. Discuss Annual Financial Audit**

**ACTION:** Selectman Dan Staples made a motion to retain Mindy Cyr to do the Town's 2018 audit. Laurie Haynes seconded.

**Discussion:** It is suggested that the auditor position be put out to bid every 4-5 years. We are coming up on that time, but there has been a lot going on this year. Clerk Lisa Young asked the Selectmen what to do about the situation: The Town had been considering putting the audit position out to bid, but with the recent election, the change in personnel, the change in banks from Camden National to The First, and other distractions, bids had not been solicited. The Selectmen agreed that they would put out the auditor position to bid for fiscal year 2019. Mindy is coming on December 12, 2018, and will make a follow-up visit early in 2019.

**Motion Carried 5-0-0**

**7b. Rescheduling the December 24<sup>th</sup> Meeting of the Board of Selectmen**

**ACTION:** Selectman Dan Staples made a motion to cancel the December 24<sup>th</sup> meeting of the Board of Selectmen. Martha Marchut seconded.

**Discussion:** The Selectmen agreed that unless there were pressing issues, the Selectmen's meeting could be cancelled.

**Motion Carried 5-0-0**

**7c. Closing the Office on Monday, December 24<sup>th</sup>, 2018**

**ACTION:** Selectman Dan Staples made a motion to close the office on Monday, Dec. 24<sup>th</sup>. Martha Marchut seconded.

**Discussion:** Clerk Lisa Young asked the Selectmen if it would be okay to close the office on December 24<sup>th</sup>. The Selectmen agreed.

**Motion Carried 5-0-0**

**7d. Replacing the Sign Near Road**

**ACTION:** none.

**Discussion:** Various options were discussed. The cost and the options to be discussed at Town Meeting. Alton suggested using some of the proceeds from the foreclosure sale, whenever it takes place, to fund a new roadside sign for the Town Office. Dan Staples thought it should go before Town Meeting.

**Motion Carried 5-0-0**

**8. Comments from Citizens: none**

**ACTION:** Select Board Chair Alton Grover made a motion, seconded by Selectman Laurie Haynes, to adjourn at 6:56 p.m.

**Motion Carried 5-0-0**

Respectfully submitted,

Katherine Hoyt,  
Recording Secretary