

TOWN OF CUSHING
SELECTMEN
Minutes of Meeting
July 11, 2016
Cushing Community Center

Selectmen Present: Chairman Alton Grover, Daniel Staples, Laurie Haynes, 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 6:00 P.M. and the Pledge of Allegiance was recited.

2. Approve and Sign the Warrants:

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marchut to approve Warrants #25 and #26.
Carried 5-0-0

3. Approve Minutes of 6/27/16:

ACTION: Selectman Martha Marchut made a motion, seconded by Selectman Laurie Haynes, to approve the minutes of the 6/27/16 meeting as amended.
Carried 4-0-1 Heidi Alley abstained due to not being at the meeting.

4. Additions or Changes to the Agenda:

Chairman Alton Grover reported that he contacted two tree service companies to get prices on trimming trees on Hathorne Point Road, but he has only heard back from one; Hoppe's Tree Service. Tim Hoppe said he could do the work in one day for a cost of \$2,400.

Selectman Daniel Staples inquired if the fee includes cutting, chipping and hauling away. Chair Grover said it does and explained that the price includes three men, a chip truck, and a boom truck. He also will be sending his proof of insurance.

ACTION: Selectman Laurie Haynes made a motion, seconded by Selectman Heidi Alley, to accept the quote of \$2,400 from Hoppe's Tree Service pending verification of proof of insurance to trim the trees on Hathorne Point.
Carried 5-0-0

5. Unfinished Business:

A. Revisit Notice of Violation Map 2 Lot 6: Chairman Alton Grover reported that per the consent agreement the property owner has seeded and grassed in the area and it looks good. He inquired if any of the other Board members had seen it but no one had. Chair Grover asked Code Enforcement Officer Scott Bickford if it passed his inspection; which he said it does. The Board signed the Consent Agreement.

B. Attorney Kristen Collins to answer questions about the land Use Ordinance: Selectman Daniel Staples reported that at the last meeting he asked why no notice of violation had been issued to Sue Fisher and CEO Scott Bickford said it smelled like estoppel, and he suggested that the Board send it to the Board of Appeals. Selectman Staples thought that it had been taken care of when it was dismissed through the court, and he noted that it could not go to the Board of Appeals because Scott had talked to the Appeals Board Chairman and that is not allowed. He asked Attorney Collins if this was true, which she confirmed it was unless it was for a variance or something like

that, if so, it would go to the CEO. Selectman Staples said it was for illegal porches, gray water system, and a building in Resource Protection. He was told that Assessors' Agent Garnett Robinson found these issues in 2005. Selectman Staples asked if the CEO had written a notice of violation to her.

CEO Scott Bickford said he had not. He forced Sue Fisher to remove the illegal gray water system, not to be mistaken it was not a septic system, but left the crush rock which he doesn't believe is a violation because there is nothing going into it. He said Ms Fisher did what she needed to do.

Selectman Staples said he didn't have the paper work to show when the porches were first discovered by the Assessors' Agent, but Planning Board Chairman Daniel Remian said that the revaluation was done in 2003. The porches and decks were not on at that time but the studio was completed. Garnett Robinson looked at it again in 2005 and the porches and decks were added as well as the gray water system with water going into the studio. Garnett notified the CEO at this time because he could not find a permit for it.

Selectman Daniel Staples noted that he would like to see documentation of this and assumes that it is hard for Attorney Collins to make a ruling when there is no paperwork. Attorney Collins said that she can give them some guidelines based on what she is hearing and stated that if this is going back to 2005 there are things to talk about which the Board might want to do in executive session.

Selectman Heidi Alley inquired about the permitting process. CEO Scott Bickford explained that anything in shoreland zoning that would require a permit that is listed in the table in the ordinance, or approval by the Planning Board, would be issued by the CEO. CEO Scott Bickford said in the former CEO's defense, Ham Boothby would go to these areas, as the ordinance allowed, and make a determination and he might find something that was not of the slope. Now, due to input from Gartley and Dorskey and boots on the ground with lidar, it proved that the area was in resource protection. Selectman Staples said that two thirds of her property is in resource protection. Scott said that in this case it was not in the 75 foot buffer but it was in the shoreland zone.

Planning Board Chairman Daniel Remian stated that the original permit said that Ms. Fisher had a permit to build a 20x20 studio near Maple Juice Cove, Map 6 Lot 51, just off the resource protection zone, and that the set back had to be 75ft from the high water mark so he felt the former CEO was quite clear.

Selectman Laurie Haynes noted that now we know it is in resource protection, but back when Ham Boothby was CEO he may have thought it wasn't. Daniel Remian said that the map approved back in 1991 shows the entire lot is designated as resource protection. Planning Board Chairman Daniel Remian said what he would like to see settled here is what grounds does anyone have to pursue this notice of violation with Ms. Fisher. The studio was permitted for a 20x20 studio, but they built it bigger, and then they put on a porch and decks later. What is the Towns' jurisdiction on that property. Attorney Collins noted that it is up to the Board if they want to talk about it in executive session or now. She suggested going into executive session.

Planning Board Member Robert Ellis asked under what circumstances does the CEO determine whether to enforce something or not based on the estoppel procedure.

Attorney Collins stated that the CEO always works under the Select Board in terms of figuring out when to enforce and then to take things to court, so it is going to be up to the Select Board to determine the risk based on her advise. In regard to estoppel, she said that over the years it has gotten narrower and narrower as a legal concept and harder to prove. It is necessary to have something in writing essentially telling you that you can do this and you have to rely on it to your detriment, and if all of that is present, then maybe the court will say no we are not going to allow the town to enforce at this point. If it were a verbal representation or something in writing but was not clear then it is not something that will likely rise up to the level of estoppel. There are several things that are going to come into play here, such as the delay, which we will talk about. Sometimes even if it is an egregious violation, if enough time has passed, it becomes too hard to take it to court. Code Enforcement Officer mentioned laches which Attorney Collins said they would talk about.

Selectman Heidi Alley inquired when the studio was built. CEO, Scott Bickford, thought it was in 2002. Selectman Alley noted that the violation actually started in 2002 with Ms. Fisher building the studio larger than what it was approved for. CEO noted as he has said many times that the Planning Board Chairman was Ham Boothby, the Planning Board approved the permit and its location and the Code Officer that issued the permit was Ham Boothby, there was an easement to get power to the property and the property owner that granted it was Ham Boothby, and the person that could look out his window and watch it all happen was Ham Boothby. The only indication Scott got

from Ham Boothby was that he told him that he thought someone was living in the studio and no one can be living in it. That was just before Ham Boothby's passing.

Attorney Collins asked when was the last time the town has heard from the property owner, or her lawyer, about anything they wanted to do with that property since the Town went to court. Scott stated that Ms Fisher has divided the lots. Dan Remian noted that it is for sale and there is a person that is interested in it and he feels it is going to come back and get us again.

Robert Ellis said the second part of his question is whether or not the allowance for a town to try and reverse their historically lax enforcement under selective enforcement if that doesn't offer the Town of Cushing some protection in this case.

Attorney Collins stated that the town never has to enforce anything, there is always prosecutorial discretion; they can always choose when it makes sense to and when it doesn't. Sometimes there is just lax enforcement because there is not the resources, lack of initiative, time, etc. If there is a pattern of that, because it is a DEP enforced body of law, DEP might get on the town's case. But there is no actual mechanism for DEP to say that this town has been messing up for not doing this so DEP is now going to force the town to take more of an initiative and go back and find all of these violations.

Robert Ellis stated that it seems as though the way this is written that to try and correct this is the right thing to do and protect against any accusations of discrimination of some sort. Attorney Collins said there are always a lot of factors but as long as you can justify why you didn't enforce it and there is no discrimination based on race, religion, family status etc. it is usually ok. It is just a matter of trying to do things as fairly as you can.

Planning Board Chair Daniel Remian asked what would DEP condone since it is strictly a violation in resource protection. Attorney Collins stated she can guarantee that if you asked the DEP they would say it is completely up to the town; they would not give any advice.

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marchut, to enter into executive session pursuant to 1 M.R.S.A. § 405 (6)(F) consultation with legal counsel at 6:30PM
Carried 5-0-0

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Laurie Haynes, to enter back to regular scheduled meeting at 6:55PM
Carried 5-0-0

6. New Business:

A. Peter Orne from RSU#13 to discuss the possibility of combining South Thomaston and Owls Head schools: Peter Orne noted that the reason behind the listening tour that they are doing throughout the district is to explain what they are doing in the RSU. They are here tonight to talk about the consolidation of the Owls Head and South Thomaston Schools, but he is also here to answer any questions Cushing may have in regard to the RSU.

Peter handed out a presentation summary that Superintendent John McDonald has of his plan for the schools in the RSU based on over a year of the RSU going out and talking to community stakeholders, teachers, parents, and coming up with a plan that makes sense for the district going forward the next 10-20 years.

The Goals are to create a high performing school system, to provide for efficient use of facilities, to create safe, comfortable and efficient schools and learning environments and to maximize resources.

They have come up with the following recommendations: Oceanside High School in Rockland a 9-12 high school, Oceanside Middle School is established in Thomaston for grades 6-8, The South School RDMS campus in Rockland becomes a Pre-K to 5 elementary school and houses Central Office services and Adult Ed., Thomaston Grammar School becomes a Pre-K to grade 5 elementary school, Cushing Community School becomes K-grade 5, Owls Head Central School is renovated and expanded to become a Pre-K to 5 elementary school, and facilities recommended for closure are Gilford Butler School, Lura Libby School, and the Mclain office building.

Finance Director Peter Orne reported that to reach the goals they are pursuing several projects. The premise of all the projects is to provide capital improvements that are necessary to the buildings and to do it within the budget. They are planning on an energy and air quality district wide upgrade to all schools which would be a savings of about 200 thousand per year, consolidation of buildings which the savings is 250-300 thousand per year, and then efficient use of resources such as not having teachers travel between schools and more ability to choose class size.

Selectman Laurie Haynes asked how much money had been saved by all of the consolidation so far, because she noted that it seems like ever since it happened the budget has increased. Finance Manager Peter Orne didn't have an exact number but he said part of the problem is the RSU has lost 25% of its students and staff due to the St. Georges withdrawal, but no one has wanted to look at the buildings and close schools. We were only looking at the financial end not about the vision of the system and what is best for the students and the communities.

Loren Andrews said millions of dollars have been saved by the first two phases of the consolidation. He said the RSU is now in its third phase of consolidation which is buildings which he likes to call "right sizing our district" our building, what we can afford, where kids should be, and what is best for their education. This should be the final phase. He noted that they should not have to redo anything for a generation. He said we should do this right; construct and renovate right. These investments have clearly fulfilled their mission from the beginning of the RSU.

Selectman Daniel Staples questioned the savings of millions of dollars because the budget has kept going up. He wanted to know if the RSU is just spending more because of the apparent savings. He stressed that you can't save millions and your budget keeps going up and up.

Loren Andrews explained that when Saint George left last year they were subsidizing the district 1 1/2 million per year. Their property values were so high that they put 1 1/2 million more into the RSU than they spent. When St. George left their expenses left as did the subsidy. That is why the budget didn't go down. This year the Town of Cushing is the only town that saw a little decrease; 19 thousand less than last year.

Loren explained that tonight's presentation is something that the communities and district need to figure out in terms of what we should invest in. There is a problem with the Owls Head school and how to put the Gilford Butler students in there in a way that works for them, the tax payers, and communities. The Rockland Middle School debt retiring will be happening in two years, so that may provide the RSU the ability to do things that need to be done in Owls Head in a way that the district can afford it without raising taxes.

Jason Merriam, from Merriam Architect in Rockland, and Mark Sabatini, from MR Corporation Surveyors and Engineers in Rockport, presented and explained the study of the Owls Head School. The Owls Head school was built in 1952 and was chosen over Gilford Butler because it has 9 acres compared to 3 acres at the Gilford Butler and can accommodate expansion. The Owls Head School is 64 years old, has asbestos tiles inside and some lead paint on the outside, nearly all of the siding needs to be replaced, the electrical service is single phase, and the boiler if expanding would need to be replaced as well as the piping. The building needs a little help. They have looked at renovating the school, building a new school, or do nothing. He stated that doing nothing can be costly too because both schools will need renovations. He also explained that State guidelines for square footage is 33,000sf; Owls Head and Gilford Butler schools combined are only 20,400sf. Because the project would not be State funded, they are still using the 33,000sf as a guideline, but it actually could be bigger if the RSU wanted to fund it.

Mark Sabatini said this public input is the first input session of three; so they will be back. He explained that the process is to receive input go back and do further design and then go back to the communities to get more feedback until a decision is made and then a referendum vote if needed. This process is just starting but they are thinking that the next meeting will be in September.

Selectman Martha Marchut inquired if the size of the proposed new school is cast in stone. Mark noted that at this time the thought is there will be two classrooms per grade so that is driving the size a little bit but everything is on the table at this time; they are just listening.

Selectman Daniel Staples inquired if South Thomaston was in favor of closing their school. Jason Merriam said at the public input meeting the feedback was a new school sounds great but how much will it cost. When students from Gilford Butler are going into the third grade they go to the Owls Head School so that part isn't an issue.

Finance Director Peter Orne gave an update on the finances and the challenge it is with health care costs and other issues. Their entry level pay is so low they can not hire anyone, and their highest paid is higher than the surrounding areas. It has got to get back in line and hard decisions need to be made, and he thinks they are doing it.

Loren Andrews talked about the struggle they have with students leaving to go to other districts when they go to the middle school, and the graduation rate is 80%, so the drop out rate is high. These are areas they are working on. He stated how excited he is about the new programming and new principal at the high school. The opportunities they have now is great, but we need to get the word out.

Loren explained that the RSU does need to do some renovating at Georges Valley to fit the 390 students. They will need four more classes for the sixth grade. Selectman Heidi Alley asked why it isn't big enough and Peter Orne stated it is because of special ed. There are Federal Regulations that require the schools to provide these services, and it is expensive, but it is extremely expensive to send a student out of the district. Because of their great program the RSU does get students from other districts and they pay the RSU.

Peter Orne said that they will bring the conceptual drawings to the next meeting and the costs for renovating the Owls Head School, building new ,and doing nothing. They also will be holding another public input meeting the first week of September. Peter reiterated that if anyone has any questions to e-mail or call him.

B. Open Truck Bids and Property Sale Bids: Chairman Grover announced that two bids have come in. One for the Truck and one for the Property Sale. He proceeded to open the bid for the property, Map 006 Lot 005, from Gary Grant for a total bid of \$3,000. He included the requested \$500.00 cashier check.

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Martha Marchut, to accept the bid from Gary Grant for Map 006 Lot 005 for \$3,000.00.
Carried 5-0-0

Chairman Grover opened the one bid for the snow plow truck from Don Meklin & Sons for \$5,001.

ACTION: Selectman Daniel Staples made a motion, seconded by Selectman Laurie Haynes to accept the bid from Don Meklin & Sons for \$5,001.
Carried 5-0-0

Chair Grover reported that, as the Board was aware, the fire truck did not get any bids and it has been put out to bid two times. He said there is an outfit from Alabama that sells fire trucks. They receive 10% of the purchase price if they sell it. Selectman Heidi Alley inquired if they do not sell it will they charge some sort of a fee. Chairman Grover didn't think so. He also said he needs to find out who delivers the truck if it is sold or do they pick it up. Alton said he will find out for sure all of the information and let the Board know.

7. Comments from Citizens: No Comments

8. Adjournment

ACTION: Selectman Heidi Alley made a motion, seconded by Selectman Laurie Haynes, to adjourn at 7:55 P.M.
Carried 5-0-0

Respectfully submitted by Lisa M. Young, Town Clerk