

TOWN OF CUSHING
BOARD OF
SELECTMEN

Minutes of Meeting

April 24, 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

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 Dan Staples made a motion, seconded by Selectman Laurie Haynes, to approve Warrants 18 and 19.

Carried 5-0-0

4. Approve Minutes of 04/24/17:

ACTION: Selectman Laurie Haynes made a motion, seconded by Selectman Martha Marchut, to approve the minutes of the 04/24/17 meeting with corrections.

Carried 5-0-0

5. Additions or Changes to the Agenda: none

6. Unfinished Business:

6a. Revisit Issue of Keyless Lock for the Fire Station

ACTION: none taken

Discussion: Sargent had quoted Cushing a price of \$650.00 to supply and install a new, keyless lock at the fire station. Select Board Chair Alton Grover priced the work at \$600.00. Grover reported that there turns out to be a light on battery-operated locks that is green unless the battery charge is weak; then, the light turns yellow as a warning that the battery will run down. There was discussion about having two outside entrances to the fire station, instead of just one. (Currently, only one door can be entered from the outside; the other entrances lock from the inside.) It was again suggested to table the discussion until selectmen speak with Fire Chief Arthur Kiskila and Helen Darmara of the Cushing Rescue Squad.

6b. Discussion of Map 28, Lot 18-1.

ACTION: none taken; presentation made by owner and his attorney

Discussion: Owner Heinz Windzio's attorney addressed the Select Board regarding his client's efforts to bring an existing structure (a waterfront "studio," (Map 28, Lot 18-1), into compliance with the Shoreland Zoning Ordinance and Cushing Planning Board requirements. The studio had been built by a previous owner, and at the time it was built it violated a local ordinance. Rather than try to bring the studio up to code for use as a primary dwelling, Windzio's attorney spelled out his client's plans to build a new primary dwelling up-slope and leave the existing studio as an accessory structure. He argued that, once the studio is no longer a principal dwelling, its location should not be a problem for the Shoreland Zoning Ordinance. (The Cushing Planning Board had required the structure be moved out of RP.) He added that moving the structure would result in ecological damage that the Resource Protection designation was an effort to prevent.

Summary: Discussion centered around (a) violations by the existing structure—including an illegal deck and problems over the years with plumbing—and whether or not those would go away if/when it is designated "accessory"; (b) the owner's wish to occupy the structure (without kitchen facilities and using a composting toilet) during the construction of his primary dwelling, a 2-year phase; and (c) the history of the studio's code violations, with implications for the present proposal and beyond.

The Planning Board was at the Selectmen's meeting. They had recently held a workshop to review the SZO. Chair Dan Remian gave the Select Board an update on that workshop, stating that the Planning Board's consensus was not to make the studio under discussion more nonconforming, not to allow it to continue violating local ordinances, and to recommend that the Select Board ask the owner to move the studio up-slope. He pointed out that the Planning Board had received a similar application from a previous prospective owner, three years before, which they had denied.

Some Specifics from the Consent Agreement called "Toilet and Sleeping Facilities Only":

According to the Consent Agreement put forth by Windzio and his attorney, Windzio is requesting:

- permission to use the studio as living space for a limited period of time, "with any cooking facilities located outside the Shoreland Zone";
- that the Select Board be given the authority "to determine if the proposed use is a 'residential dwelling unit' under the Cushing Shoreland Zoning Ordinance";
- to "build a new residential dwelling unit in the next two years and is seeking Planning Board Approval of the deck [->on the *studio*—KH], which [->construction] 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."

The parties agree that:

1. the owner will not attempt to make a residential dwelling unit of the studio ["the studio may not contain cooking, sleeping and toilet facilities that would make it a 'residential d. u.'..."];
2. the existing 20' X 20' studio structure on the property will be "allowed to remain, may be occupied in its current location as additional living space, and may contain toilet and sleeping facilities, provided that the studio shall not be used for sleeping for more than 20 nights a 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 before the new residential dwelling unit is constructed.";
3. owner will "remove all cooking facilities from the studio, including the refrigerator, kitchen sink, and related plumbing," and he agrees "not to store, cook, or prepare food in the studio structure." [Note: A sentence follows giving him permission to set up a platform tent outside the SZO for dealing with food.];
4. owner gives CEO permission to inspect, with 24 hours' notice, once every 6 mos., and owner agrees to notify the Town of any changes in owner's contact information;
5. owner agrees that, within 2 years of agreement (with opportunities to request extensions if there are problems), he will properly complete construction of the new primary dwelling; that a septic system for this new dwelling will be located outside the Shoreland Zone; and that if the deadline passes without Select Board approval of extension, "the allowed use of the studio structure will revert back to the studio use approved in 2002." [See additional discussion of Item 5, following.]

6. "The deck may remain in place until the owner applies for an 'after-the-fact' building permit from the Planning Board." Discussion of the time frame. [See additional discussion of item 6, following.]

Discussion of #5: After dealing with how/when owner would build the new primary dwelling, a paragraph is dedicated to what will then become of the studio. No mention is made of food prep or storage, but the Consent Agreement notes that owner may apply to the Local Plumbing Inspector "to replace the composting toilet with a plumbing for a flush toilet, and/or to add a small bathroom single sink in the studio bathroom in full compliance with applicable law and pumped into the new septic system outside of the Shoreland Zone". This led to additional discussion, summarized here:

Windzio's Attorney: We are looking to be able to apply for plumbing, not to get permission for plumbing.

Town Attorney Kristen Collins, to CEO Scott Bickford: Would this be okay, to have a line running from this structure in Resource Protection up to a septic that's approved, outside?

Scott: That's a tough one to answer. You would have to travel through Resource Protection to dig a trench to get up there, which I question. I'm not prepared to answer that now. I think if there's a consent agreement, that's part of what I would be asking to be incorporated.

Discussion of #6: Early on in the meeting, before the Consent Agreement was presented, Windzio's attorney implied that a lawsuit might result if the Town were to "try to force the deck off" the studio. He suggested that such a lawsuit might say that the CEO, by his actions or lack thereof in 2002, waived the Town's right to enforce its ordinance in this instance. The deck generated a significant amount of discussion, throughout. Here is a summary of portions:

During his initial presentation, Windzio's attorney said that everyone acknowledges that the structure should not have been built. He said his client will want an after-the-fact permit for the deck. The deck has been there for 15y. [Upshot: It's not hurting anything; let's leave it. Moving it would cause more damage.] As accessory structure, it's permitted in the RP district as long as it's set back 75 feet. "Once we have the new house, we have a conforming primary house, now can this be an accessory structure? I think the answer is that it can be."--Windzio's attorney

Town Attorney Kristen Collins asked CEO Scott Bickford how far the studio was set back from the water.

Scott Bickford: "I think it's approximately 85'. RP is an overlay on the shoreland zone. You could have 250' of sheer drop which would be RP if it's more than 20% slope over 2+ acres. So, consequently, even though it [the studio] is outside the 75', it still is in that [RP] overlay." Planning Board members agreed with this assessment.

Selectman Martha Marchut asked if there were conditions on accessory structures in the RP zone. "Not carte blanche?" Kristen Collins replied that accessory use is allowed. "A guest house can be an accessory structure as long as it doesn't have food prep facilities"--for example, a bunkhouse.

Planning Board Chair Dan Remian asked how many Selectmen had seen the studio. "For the record, I also went down on Saturday with Bill Aboud to look at the deck to see if it could be removed without hurting the main structure. It's bolted together. It could easily come apart. There are 12' 6 X 6 piers there, on slabs. It would not affect the main structure if that deck came down. I want this to go on the record."

Windzio's attorney: "We're not asking you to tell us whether or not the deck can stay, tonight."

---Executive Session---

The Select Board entered into Executive Session, pursuant to 1 M.S.R.A. §405(6)(E), consultation with legal counsel, at 7:01. A motion was made by Select Board Chair Alton Grover and seconded by Dan Staples, to go into Executive Session.

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

Town Attorney Kristen Collins began by stating a concern of the Board: the expense of legal counsel. Selectmen asked Windzio, as part of the Consent Agreement, to agree to contribute \$3,000.00 toward the Town's legal fees. *[Note: Discussion that took place in Executive Session and was summarized when the Selectmen rejoined the main meeting has been incorporated in the above minutes.]*

Planning Board Chair Dan Remian asked about the appeals process. If PB says no to the after-the-fact deck, how far could this go? Kristen Collins reminded those present that the issue could go to court. "And," she added, "it could take a year, plus the local process. So, eighteen months. We could, as part of that process, try—subject to estoppel issues—to make the point that the deck is illegal and ask you to remove the deck until this is all resolved."

Planning Board Member Bill About asked: "Are you saying we're not going to address the deck until after he builds his house?" Attorney Collins said, "Yes. At the same time he submits the permits."

Town attorney agreed to make the suggested changes to the Consent Agreement and submit to the Board of Selectmen.

At 8:10, Chris, Heinz's attorney thanked the Board, said he could not commit his client to paying the \$3,000.00, but would get back to the attorney on this point, and Attorney Collins said there would be no formal vote at the current meeting.

Planning Board Chair Dan Remian wanted to clarify that there are ways of moving the structure without causing environmental damage, as verified by Dwight Henry, a crane operator. He discussed cutting trees, allowing as how it was a moot point.

At 8:10, Heinz Windzio's attorney thanked the Select Board, and left.

7. New Business:

7a. Transfer Station Update

ACTION: none taken

Discussion: Selectman Martha Marchut brought the Board up to date on Waldoboro Transfer Station news: A new agreement is being put together, as the current one will expire in 2018. Martha said that Bob Butler, Waldoboro Selectman and Chair of the Waldoboro Transfer Station Committee, and John Daigle, Director of Public Works, wanted to attend the next meeting of the Cushing Board of Selectmen. They want to talk about the transfer station, going forward. Martha briefed the Selectmen that Friendship and Cushing would like to have voting rights on this joint board. She had been told that Waldoboro might want some concessions, in return. Dan Staples asked if construction had begun on the new transfer station, and if it would be up and running by 2018. Martha commented that there was a back-up plan in place, in case it's not ready in time.

8. Comments from Citizens: no additional

9. Adjournment:

ACTION: Selectboard Chair Alton Grover made a motion, seconded by Selectman Laurie Haynes, to adjourn at 8:20 P.M.

Carried 5-0-0

Respectfully submitted,

Katherine Hoyt,
Deputy Municipal Clerk