

Approved 8/7/08

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
July 2, 2008**

Board Present: Chairman Dan Remian, David Cobey, Bob Ellis, Evelyn Kalloch, Frank Muddle, CEO Scott Bickford and Recording Secretary Crystal Robinson

Absent: None

1.Call to Order: Chairman Remian called the meeting to order at 6:00 P.M. A minute of silence was held in memory of former CEO and Planning Board member Ham Boothby, who passed away last week.

A roll call was taken and a quorum declared. Mr. Muddle requested that future meetings begin at 6:30 P.M. and the Board agreed to the change.

2. Approve the Minutes of 5/7/08 and 6/5/08:

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to accept the minutes of the 5/7/08 meeting as distributed.
Carried 5-0-0

In the 6/5/08 minutes the secretary had left blanks on Pages 2 & 3 because she could not decipher particular words. No Board member was certain what the words should have been so it was decided to leave them as shown.

ACTION: Mr. Ellis made a motion, seconded by Mr. Cobey, to approve the minutes of the 6/5/08 meeting as presented.
Carried 5-0-0

3. Robert C. & Deborah G. Lord, Application for Land Use Change for Excavation and Fill in the Resource Protection Area, Map 6, Lot 22-6: The chairman asked Mr. Bickford if he had looked at the site. The CEO said he had visited the site and the area was Resource Protection [RP]; he added that Mr. Lord had paid the required application fee. Mr. Remian recalled that the Board had pointed out in 2006 that there was an intrusion into RP there and he thought it had been a condition of approval that it be removed. Mr. Bickford said that after the permit had been issued he had brought to the Board's attention that some rock should be brought back from RP. Mr. Lord stated that the rock had been removed and the CEO confirmed this.

Mr. Ellis recalled that the rock in question had been on the west side of the property, while the PB was now considering the north side of the garage. Mr. Remian asked how much fill Mr. Lord anticipated bringing in. The applicant replied that he planned to fill a 12' X 20' area to the toe of the rock slope. He stated that it was not possible to walk around the side of the house and 4'-5' retaining wall would be erected. In response to a question from Mrs. Kalloch, Mr. Lord confirmed that a triangle-shaped piece of the area in question was in RP. Mr. Bickford said he did not see a problem because the original plans showed the foundation going right to that area. He said no standing trees would be affected by the retaining wall, no trees would be removed, the wall would be solidly built and its installation would not disturb the RP area.

Mr. Cobey said the plan showed the door swings between the great room and the corridor of the house to be about the same dimension as what was noted as a 12' wide fill area. He said that made the fill area only 4' wide, which would mean 80% of the fill area was in RP. He asked the width of the garage doors and Mr. Lord said they were 8'-9' wide. Mr. Cobey established that the gray area on the plan depicted RP and 80% of the fill area fell within the gray. Mr. Ellis asked if Mr. Cobey was saying the proportions on the plan were incorrect and Mr. Lord said the drawing was not to scale, though it was properly staked at the site. Mr. Ellis asked if Mr. Cobey were saying that, were the proportions correct, the fill area would extend twice as far. Mr. Cobey replied that the photograph did nothing to delineate RP and he estimated 80% of the fill would be in the RP.

Mrs. Kalloch asked the CEO if he had seen the area staked out. The CEO said he had not, but had a verbal description from Mr. Lord as to what he wanted to do. Mrs. Kalloch asked if the PB should take a look at it. Mr. Remian noted that the retaining wall would not go beyond the rip-rap area and asked the CEO if he was comfortable with that. Mr. Bickford replied that he felt it would not be a problem if it would not be more intrusive than now, while it should be made clear by the Board that there was a concern. Mr. Cobey asked if the area was intended for parking. Mr. Lord said he would place a propane tank there and be able to walk around the tank.

Mr. Bickford said he understood that Mr. Lord planned to seed the area once it was leveled. Mr. Lord said he did not think grass would grow there and the CEO said in that case the Board should discuss erosion. Mr. Remian said there would be heavy drainage with the rip-rap in place and the base should be stabilized. Mr. Lord said he had planned to put stone on top of the rip-rap. Mr. Ellis said that topping the rip-rap with small stone would perpetuate the current condition. Mrs. Kalloch asked where the water would go and Mr. Ellis replied that it would go right down through the rip rap.

ACTION: Mr. Muddle made a motion, seconded by Mr. Cobey, that we approve the request if the retaining wall would not intrude further into the RP and there were no trees involved.
Motion later withdrawn

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, for a positive finding based on information provided by the applicant that the project will maintain safe and healthful conditions as stated in Section 16(E)(3)(a-i) of the Shoreland Zone Ordinance.
Carried 5-0-0

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, to approve the application with the previous motion stated.
Carried 5-0-0

4. Continuation of Roberts Mountain Subdivision Denial Reconsideration, Last Resort Holdings, LLC, Map 5, Lots 83 & 84:

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, that the denial of February 2008 stand because the applicant, by agreement between the applicant, his attorney and the Board, had been given a two-month extension until May and the Board had allowed an additional two months for submission of the evidence requested.
Failed 2-3-0 (Mrs. Kalloch & Mr. Remian voted in favor)

Mr. Tower's attorney, Edward Bearor, said he trusted that his client would be heard before a vote. He said the financial information had been provided earlier and the DEP approval had come in last Friday and was delivered to the CEO today, along with the DOT entrance permit and a plan signed by the surveyor. He said the lateness of these items had been beyond Mr. Tower's control, as he had previously told the Board. Mr. Bearor said he felt his client had done everything he could since February to prod the DEP and had finally gotten that approval, including the storm water permit. The attorney asked that the Board reconsider its February denial now that these items had been received.

Mr. Remian said the delay was not beyond the applicant's control because a letter requesting additional information had come from the DEP in March. Mr. Bearor said the developer had provided any information requested by the DEP in a very timely manner. The attorney said he felt the chairman was being arbitrary by adhering to a timeline for reconsideration when there had been no way the applicant could force an early decision by the DEP. He said he had proceeded since May with the understanding that the denial would be reconsidered after the materials were received. Mr. Bearor said he thought Mr. Remian's motion was not reasonable under the circumstances.

The chairman asked the CEO what he had received today. Mr. Bickford said he had received two DOT entrance permits with a current date, one for Robbins Mountain Subdivision [RMS] and one for pier access across the road. The CEO stressed that he had not reviewed these items and had felt it inappropriate to distribute them this evening. He had also received a DEP letter and information from Jeff Madore. The CEO said he had also received "not overly busy" plans for the RMS; he did not know if these were original or changed and had not reviewed them for completeness or to see if they were stamped or surveyed. Mr. Bearor said the plans were stamped and sealed by the surveyor. Mr. Bickford said he could produce these items immediately if the Board so desired, though he cautioned that the Board was discussing reconsideration of a decision rather than the review of materials.

Mr. Muddle said the problem at the May meeting was a border dispute, which was not in the Board's purview, and the financial clarification that was resolved with the agreement that nothing would be sold until all the improvements were in place. He said the remaining item had been storm water and the feeling that this was in the hands of the DEP. Mr. Muddle said he thought it would be a mistake to now cut off reconsideration of the denial. Mrs. Kalloch said these materials had come in late and there was no reason the Board could not let the denial stand. She said Mr. Tower should bring in all new documents and plans because they had changed so substantially from his original submissions. Mr. Remian agreed that he had noticed differences in the drawings. Mr. Cobey said he saw some errors in the new plan, including that the line with Mr. Cardon had not been resolved, as previously claimed by Mr. Bearor. Mr. Cobey said he was uncomfortable with continuing to consider this the same application.

Mr. Bearor said the Board had understandably not had a chance to review the submissions that had been delivered to the CEO today. He suggested that, in fairness to the applicant, he bring to the next meeting the February and new plans on posterboard. He said the changes could then be reviewed and the Board could discuss whether any of those changes affected the review criteria they had previously passed. He said if the changes did affect the previous votes, the Board could decide how to handle it; if they did not, there was no reason to go back to step one. He said Mr. Tower's surveyor would attend the meeting. Mrs. Kalloch said there were substantive changes and she felt Mr. Tower should restart with a new submission. Mr. Bearor said the Board had already approved the majority of criteria and he could not see why a new application was required.

Mr. Ellis said he had understood that the only thing affected by the survey requested would be the lot sizes of the lots on the Cardon boundary. He suggested the Board give the drawing with the new northern boundary a fair review because it might be possible to avoid the unnecessary work of starting from the beginning again. Mr. Muddle said seven lots had changed dimension, so the road must have moved some. Mr. Remian cautioned the Board not to get into any review of the drawings. Mr. Bearor said the positions of Mrs. Kalloch and Mr. Remian had been over the top from the beginning. He said his client would like the opportunity to discuss the changes to the plan. Mrs. Kalloch said the Board represented the town and its best interests and her opinion stood. Mr. Remian said it was a Board decision, not his.

Mr. Muddle said he saw some changes, but not significantly different from the November 2007 drawing. Mr. Bickford cautioned that the Board should not get into details as to why individual members might want or not want to reconsider. Mr. Muddle said reconsideration had been held up for three items, the third of which had now been received. Mr. Ellis said his concern from the last meeting was whether the new plan was the one that the DEP had approved. He had been told it was and said if that proved to be true that would remove a lot of his doubts and he would be ready to continue the review of the remaining criteria. Mr. Ellis said the Board had repeatedly tabled reconsideration of the denial while it awaited the requested submittals, so it made no sense to vote to reconfirm the denial now that the materials had been received. Mr. Remian said he had been unaware until now that the materials had finally been received.

In response to discussion about changes to the RMS plans, Mr. Bearor said the applicant would come to the next meeting with display copies of the February and new plans, with any changes clearly marked. He said the Board could then determine if any changes affected review criteria already voted on and decide how to proceed. The attorney said he would also have the surveyor present at that meeting. Mrs. Kalloch said she felt the denial should stand and the applicant should come in with a new submission because of substantial changes to the plan. Mr. Bearor said the Board had already approved all criteria except the items just submitted. Mr. Ellis said he felt the Board should give the new plan a look because he understood that only the northern boundary, some lot sizes and the road had changed. Mr. Bearor asked the chairman what specific changes he saw on the new plan and Mr. Remian said he could not respond because he had not seen the new plan. He simply said he had noticed enough changes between the original plan and the version he had most recently seen to warrant a new review. Mr. Muddle said he felt the changes from the 11/21/07 drawings were not significant. Mr. Bickford suggested the Board deal only with the denial reconsideration and not discuss each member's concerns about the changes and how to handle them.

ACTION: Mr. Cobey made a motion, seconded by Mr. Ellis, to table the reconsideration until we have had a chance to review the new information.
Carried 3-2-0 (Mrs. Kalloch & Mr. Remian voted against)

The chairman confirmed for Mr. Bearor that the reconsideration would be on the August agenda. Mr. Cobey said he would like to formally request that Mr. Tower's surveyor attend that meeting. Mr. Bearor said he would.

Mr. Cobey said he felt the Board should deal with Mr. Tower's request to have the RP changed on certain lots, but the PB had never seen the plans. Mr. Remian said he had written a letter to that effect to Mr. Tower. Mr. Tower said the drawings had been submitted to the PB. The Board disagreed. Mr. Cobey asked the developer if he had gotten a receipt and Mr. Tower said he probably had not. Mr. Tower said he had first submitted copies to the PB and he had copies of the correspondence. He said he then submitted them to the Ordinance Committee and then wrote a letter, including all the maps, to the town. He said he would do it again and get a receipt. Mr. Cobey and Mr. Remian said they had seen the letters, but no maps.

New Business: There was discussion about the date of the next meeting because some members were not available on the scheduled date. The members agreed to provide their availability information to the chairman, who would schedule the meeting and inform the applicant.

Mr. Bearor said Mr. Tower thought the ordinance stated that the CEO determined if an application was complete, thus triggering a 35-day review period. Mr. Bearor was referring to the Rock Coast Outfitters application. Mr. Tower said the CEO had found the application complete at the last meeting, as allowed by the SZO. The members said they had never received a complete application. Mr. Ellis said the ordinance decreed the 35-day clock did not start ticking until the PB received the application form provided by the municipality, which had not happened at the last meeting.

5. Adjournment:

ACTION: Mr. Cobey made a motion, seconded by Mrs. Kalloch, to adjourn at 7:05 P.M.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Writing Secretary

NOTE: The writing secretary would like to request that the digital recording be provided to her along with the recording secretary's notes of each meeting. The quality of the digital recording is far superior to that of a tape and makes her job much speedier, now that Mr. Ellis has kindly instructed her in its use.