TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting*
Wednesday, October 4, 2023

**The applicant and the CEO both presented information in the form of exhibits. These exhibits are not in these abbreviated minutes but can be found in the file of the application held in the Town office.*

Board Present: Chair Bill Aboud, Austin Donaghy, Bob Ellis, Jay Jones,

Staff Present: CEO Matt Deane

Select Board Present: None

Others Present: Bill Kelly, Esq. (Counsel for Mr. Deane), Ben McCall, Esq. (Counsel for the PB)

1. Call to Order:

Chair, Bill Aboud, opened the meeting at 5:22 pm and immediately made a motion that the Board enter into Executive Session pursuant to 1 M.R.S.A. 405 6.E: Legal Counsel Consultation.

Mr. Jones Seconded, and the motion carried unanimously.

The Board then discussed with their attorney the interpretation of various paragraphs of the Shoreland Ordinance.

Chair Aboud made a motion that the Board come out of Executive Session at 6:05 pm

Mr. Donaghy Seconded, and the motion carried unanimously.

PLANNING BOARD MEETING

Board Present: Chair Bill Aboud, Austin Donaghy, Bob Ellis, Jay Jones,

Staff Present: CEO Matt Deane

Select Board Present: Mike James, Cheryl Stackpole (Stayed only for the opening few minutes of the meeting)

Others Present: Bill Kelly, Esq. (Counsel for Mr. Deane), Ben McCall, Esq. (Counsel for the PB), Heinz Windzio, Chris Neagle, Esq. (Counsel for Mr. Windzio), Sherry James, Tom Nichols, Jake Ecker, Ethan Moon

1. Call to Order:
Chair, Bill Aboud, opened the meeting at 6:04 pm and the Pledge of Allegiance was recited. A roll call was taken, and a quorum declared.

2. Approval of Minutes:
The Chair asked if there are any changes to be made to the draft minutes of the September 6, 2023 meeting. Hearing none, asked for a motion.

Mr. Donaghy made a motion to accept the minutes as published, Mr. Jones seconded, and the motion carried unanimously.

3. Communications and Correspondence:
The Chair received an email from Andrew Hedrich in which he made the following request:

"Maine Property Investments formally requests the Cushing Planning Board to table the preliminary subdivision application and the land use permit application for activity within the shoreland zone for the proposed Water's Edge Subdivision at the next Planning Board meeting."

The Chair then asked for a motion to formally table their application as per their request.

Mr. Ellis made a motion, seconded by Mr. Jones, to table their application as per their request. Carried unanimously.

4. New Business
An Application for Change of Use of an existing structure in Resource Protection to Accessory Structure, and Structure Expansion for 700 sq. ft. deck in Resource Protection, on Map 28 Lot 18-1, whose street address is 812 Pleasant Point Road for Mr. Heinz Windzio.

Chair Aboud asked Mr. Windzio to introduce himself and his representative and describe his application to the Board. Mr. Windzio thanked the Board for its work, described himself as an average guy who was looking for a place to retire. He said he enjoys Cushing and wants to retire here. He also said he talked to the previous CEO, Scott Bickford, about the property, and said he was aware that Ham Boothby, the CEO at the time the "studio" was built, knew about the problem with the location and never took any action. The deck has been there for twenty years and caused no harm; it's needed because of the 5 doors opening onto it, and asked the PB to keep this in mind as they deliberate.

Mr. Neagle then introduced himself, gave a short synopsis of his background and gave his version of the reason for the application. He said he would try to keep it simple as they were merely requesting "an after the fact permit" for a deck that was built 21 years ago under the supervision of the then Code Enforcement Officer (Ham Boothby) who lived next door. Mr. Naegle said he understood it was built as a work deck while they were building the studio. It doesn't matter whether the deck was approved as part of the structure. The studio application was for an accessory building for art in 2002. It was approved with composting toilet and no kitchen facilities. After the artist died, the owner, who was having a legal dispute with the town, put in a crude kitchen facility. What makes this complicated, is that when built, this was an accessory structure to an existing principal structure, but in 2005 the owner sold the main house. What was left was an accessory structure with no main house to be accessory to. Now Heinze has a beautiful home on the property and this studio is an accessory structure to a primary residence.

Mr. Neagle then described in detail the history of the Town with Mr. Windzio. and questioned why the CEO was bringing this up now. He then went through several of the exhibits he submitted with his application and said he believed the application meets the review standards. He stated that Mr. Windzio wants to use the studio as a bunkhouse (or guesthouse). It has no kitchen facilities. Since it meets all the qualifications for an accessory structure, he said it should get a straightforward approval.

Chair Aboud thanked Mr. Neagle for his comments and then asked CEO Deane to give his assessment of the application and its completeness.

Mr. Deane stated that the application was complete. He further stated that when he took the job as CEO of Cushing, he was asked to clean up any outstanding issues/violations and unfinished business. This problem with the studio was one of those that needed to be resolved.

Mr. Kelly then took the floor to introduce himself and stated affirmatively that he and these proceedings were not going to be confrontational. His goal is to bring clarity to the findings of facts and conclusions of law. He then said that Mr. Deane was going to talk through the Town's record of what occurred since the application from Sue Fisher for the structure was filed.

Mr. McCall then introduced himself and stated his role was to provide advice on procedure to the Planning Board and at the end of the process to draft the findings of fact and conclusions of law.

CEO Deane began the summary of his research (he read from exhibits he presented (most of the exhibits were the same as historic records also provided by the applicant).

- March of 2002 Sue Fisher applied for and received a permit for a 20' X 20' studio. The permit says it must be placed just out of Resource Protection Zone due to slopes and further on then says must be set back 75' from high water mark.
- Mr. Deane noted that part of the structure is within the 75-foot water line buffer, all of it is in Resource Protection; and it wasn't built in accordance with the permit.
- (Referring to the property tax card), said the Town started taxing that building in 2005, so the building was probably completed in 2004.

- In 2015 Tim Cole, a potential buyer, attended a Planning Board meeting with an application to turn the studio into a dwelling, which the PB denied because of violations on the property and that it was in the RP Zone.
- PB recommended that the CEO address these violations (addition of a deck, expansion of porch and erosion under the structure).
- In August of 2015, Sue Fisher requested to have all of the property's district designation changed from Resource Protection District to Limited Residential District, which PB denied based on a topographic survey produced by Gartley and Dorsky. She was told that that change must be voted on by the Townspeople at a Town meeting.
- Sue Fisher appealed that decision in December 2015. The Appeals Board forwarded the appeal to the Selectmen, as instructed by SZO Sec.16. C. That Appeal was denied.
- August of 2016, the then current CEO, Scott Bickford, addressed concerns with Fisher in a letter, saying she must give full disclosure to any potential buyers and share the letter pointing out that the structure does not comply with Resource Protection requirements. His instructions on how to avoid further violations included: no beds, no cooking facilities, disconnected from any water source, no bathing facilities inside or out, no wastewater, but can have composting toilet.
- Fall of 2016—A series of Consent Agreements were drafted with Heinz Windzio.
- 2017—Mr. Windzio signed a consent agreement that Kristen Collins, who was representing the Town at the time, drafted, which had to be approved by the Select Board.
- Select Board required him to pay the legal costs/fines, which he did, but the SB hadn't signed the agreement when Mr. Windzio rejected the agreement and requested his money be returned.
- May 2017- A receipt for an Intent to Build Notice was issued to Mr. Windzio for his new primary structure by CEO Scott Bickford to be built outside the Resource Protection Zone. Included in his application, Mr. Windzio provided documentation that the property title is now in joint ownership with his wife Julia, including a small parcel purchased from a neighbor to accommodate their driveway.
- June 2017—CEO Scott Bickford notified Windzio that, in order to avoid a NOV, there was to be no overnight use of the studio, all food preparation facilities be removed, and he was to make sure plumbing had been removed. CEO also instructed him to submit an application for the studio to be an accessory structure to the new home, but Mr. Windzio didn't do that.

Mr. Ellis said that he recalled that Mr. Windzio sent a letter about two months after the home was completed and proclaimed that the structure was now an accessory structure. He acknowledged that he did not submit the application for an accessory structure but did admit that he should have. Mr. Windzio agreed with Mr. Ellis and said he believes the letter is in the application packet. He also agreed there was no follow-up in the intervening 5 years by himself or the Town's CEO.

- In May of 2023 CEO Deane visited the site to determine what if any violations still existed on the property. Following that visit he sent a notice of violation letter and an order to cease & desist for using the structure as a dwelling.

- CEO withdrew the violation a month later due to Mr. Windzio's voluntary compliance with some of the requirements.
- In early August 2023, Mr. Windzio was reminded that he still needed to submit an application for a change of use permit for the 20' x 20' studio in the RP District and apply for a permit for the unpermitted deck.
- The town didn't receive those submittal documents until after the deadline to get on the September agenda, hence the October meeting date.

Attorney Chris Neagle then offered the following speaking points:
•Doesn't think that what happened with Sue Fisher is relevant
• Mr. Neagle submitted his own history but choose not to go into that at this time unless the Board wanted him to (Chair said, "No, we've all read it already in preparation for this meeting").
•Mr. Windzio acknowledges that he should have come to the Planning Board earlier

Chair Aboud (addressing the Board, the CEO, the Lawyers and the audience) asked if there were any questions or comments for or from anyone.
Then, hearing none, closed the public portion of the meeting in order for the Board to deliberate.

•The Chair asked the Board if the application meets **Land Use Standards #15 (page 17)**
• Mr. Ellis said it appears to him that the lot meets the minimum standards, that is, frontage and 40,00 square feet.

Contention erupted over how many feet from the water line the studio is.

While discussing 15. B. the applicant referred to a survey done at the request of Sue Fisher in 2014 showing the studio structure to be outside of the 75' setback. The CEO referred to a survey done by G&D that shows it to be completely in the Resource Protection Zone.

Heated arguments ensued over which survey can be used, and whether or not it proved where the studio is relative to the 75-foot setback. There was also an allegation by Mr. Neagle that the G&D map was withheld from the applicant. He said he was being treated unfairly especially by the CEO. (Mr. Windzio later admitted that he had a copy of the G&D slope survey.)

When Mr. Neagle said he did not have a copy of the map, he was offered by the Chair, time to review the map and to hire his own surveyor/engineer to refute it. Mr. Naegle did not ask for the meeting to be tabled to allow time to do that. He went on to say he was not refuting Resource Protection determination, only the set back.

Chair Aboud said, "Since we have two maps that indicate different data as to whether the structure is in 75' setback, the PB has to decide on which map to base its decision." Some further argument came from Mr. Neagle about how and what the PB needs to do.

Mr. Donaghy suggested we do another measurement. Mr. Ellis suggested we hire someone to do another measurement on the ground. He further suggested we hire G&D to do it.

Motion then was made by Mr. Ellis and seconded by Mr. Donaghy to have G&D measure the setback. 3 voted in favor, one abstained.

> *Mr. Jones abstained, believing it would be redundant to have the people who originally did the survey to confirm they did it correctly. Later, he heard they did not put the 75' line on the map, merely determined the RP. So, he agreed to the hiring of G&D for the setback measurement.*

Mr. Neagle objected that the Town altered an exhibit and considered it a withholding of information. He accused the CEO of "stacking the deck". CEO Deane took great umbrage at the allegation and an argument ensued about how much information was provided. Mr. Naegle continued to complain about the Town's process.

Mr. Kelly interjected that the issue was not so much where the studio is located, but where the deck is. He said the Board needs to determine what was originally permitted at that time. Then referring to the G&D map, said if the applicant needs time to investigate the facts presented by this exhibit, that would not be an objection.

Mr. Neagle said he hadn't seen the original application and doesn't know, and the Board doesn't know, what was approved. The deck may well have been part of the permit. He offered to take some time to see what was filed with the application to see if the deck was included. He offered to contact Sue Fisher.

Mr. Ellis made a point of order that we are to review a permit for a change of use for a Structure in Resource Protection in order to determine that the application complies with the standards. That's why we are here. He continued, saying,"We do this with every application. We check the boxes. And the setback is the first one. And that's as far as we've gotten now."
Mr. Neagle than asked if the Planning Board could separate the Change of Use from the deck issue so perhaps, we can get that done tonight. Mr. McCall said the Board could bifurcate the application.

Mr. Nichols wanted to say something so the Chair reopened the floor to permit **PUBLIC DISCUSSION.**
Mr. Nichols asked, "If the deck were cantilevered and posts were taken out, does that fit the rules?"

Mr. Donaghy answered by saying, "No, it's the footprint." He further said the application was for a structure 20' x 20', but then estimated that the building width, including the deck, is 30' wide. Mr. Windzio said the deck was 6' wide. Mr. Donaghy said, then the structure is 32 feet wide.

Mr. Kelly said the Ordinance says the set back is defined to the nearest part of the structure to the mean high-water line. It doesn't matter if the structure is cantilevered or not.

Chair Aboud urged the Board to continue deliberating. Mr. McCall said that the Board would have to decide if they are going to bifurcate the application.

After some discussion, each of the Board members said they would have no trouble separating the application into two.

During the discussion to find the wording to separate the application into two, Mr. Neagle once again condemned the CEO for his actions toward Mr. Windzio. The CEO immediately called Mr. Neagle to task and said if these allegations and accusations continued, he will ask the Select Board member in attendance (Mr. James) to stop the proceedings.

Mr. Windzio then spoke on his own behalf and requested the Board make two separate decisions in order to at least do the Change of Use decision tonight.

Chair Aboud asked for a motion.

Mr. Jones made a motion to bifurcate the application into two separate discussions and decisions., Mr. Donaghy seconded it.

Unanimous. Motion passed.

Mr. Donaghy pointed the Board to **Section 17 Definitions (Page 52)** He read the definition for "**Accessory Structure or Use**".

Chair Aboud asked if any other standards apply. Mr. Ellis felt we should discuss **Section G (page 46) Special Exceptions** as they may apply to this decision about whether this structure can meet the special exceptions rules.

Mr. Mc Call said whether or not the Special Exceptions apply to this situation, they are about the physical structure itself and not to the use. Since we separated the decisions, the Board should only talk about the use of the building not the building itself.

Mr. Ellis conceded the point and then referred to **The Table of Land Uses (Table 14.1) (page 14) #14 Structures Accessory to Allowed Uses** where it shows it is allowed in RP with no footnotes. So, Mr. Ellis said it is permitted.

A discussion lead by Mr. Ellis ensued about whether the Accessory Structure permit was ever complied with on both the setback and the RP in the original 2002 permit.

Mr. Mc Call replied that issue is for enforcement. Tonight, the Board is only considering what is being asked for in the application, which is its use.

Mr. Ellis asked if we have a motion for its use on the floor. Chair said not yet.

Mr. Donaghy said the motion is: that having split this application into two pieces, where one of the pieces is the use of the structure, the use they requested ("bunkhouse") is clearly defined in the definition in Section 17 as being permitted.
Seconded by Mr. Jones.

Unanimous. Motion passed.

The Chair then said we still have before us the issue of whether or not the deck can be approved.

Mr. Neagle said it was his understanding that we agreed to table that discussion until we can do more research as to exactly what Sue Fisher asked for and what the Planning Board approved.

Mr. Donaghy referred to the original permit where it says, "to build a 20' X 20' studio near Maple Juice Cove…just off Resource Protection Zone due to slope" and the condition was that it was to be 75' from the high-water line. We are finding that a number of these things are not true. This is a 32' X 32' structure that has had an addition put on to it for some kind of porch, which clearly was an addition as the roof was just added on top the other roof. And we have decking that vastly exceeds the 20' X 20' approved permit. Mr. Donaghy said that he has the flyover pictures from the (Knox) County which he would take a look at.

Mr. Windzio brought up the map that they submitted in their application and said it was in the Registry of Deeds, and it depicted the setback. He complained that the Board had not taken issue with the setback until now. He stated that the Board was unwilling to accept that map. Mr. Donaghy gave an example of items in the Registry that are incorrect, suggesting that the Board determines compliance not the existence of a document in the Registry.

Chair Aboud said he did not want this to drag on and on, so suggested we agree to meet next PB meeting in November to present our research and come to a conclusion. Mr. Neagle said he would endeavor to do that by reviewing his files and contacting Sue Fisher. (A comment was made that she may have passed away.)

Mr. Deane said he has given them everything he has from the Town's records. He offered to get them the G&D map.

To everyone's surprise (except perhaps Mr. Windzio), Mr. Neagle admitted that he had that map! This caused a short disruption.

Mr. Deane said he would give Mr. Neagle a copy of the newly marked up map with the 75' line to be drawn by G&D.

Mr. McCall said the decision that the PB makes on this application is to be based on information that is put into the record by the applicant or the CEO; he also said members of the Planning Board cannot do their own investigation or bring information that is not in the record for consideration. He suggested that there were two lines of inquiry. The applicant can bring any additional information to clarify their position on the two issues, and the Planning Board will determine the conditions of approval in the original permit from 2002 and where that structure is in relation to the 75' set back. All new information should be shared before the next meeting in November.

Mr. Neagle agreed to the PB getting their own surveyor. Mr. Ellis asked if we should set up an escrow for the third-party fee. Mr. Neagle said indignantly, "Are you suggesting we pay for it?!"

Seeing an argument was about to begin, Mr. Mc Call intervened and said that was an issue for the counsels to hash out between themselves.

Another outbreak began by Mr. Neagle expressing concern about fairness and "...how this town does business. It is unfair including this CEO. I will show up at a Select Board meeting to tell them how this works."

Mr. Mc Call suggested a motion be obtained to table the second part of the application until the next meeting.

Mr. Ellis so moved. Seconded by Mr. Donaghy.
Unanimous. Motion Passed.

The meeting became chaotic as Mr. Neagle further inveighed against the Town and the CEO's unfair process. Various attendees voiced counter comments. Voices were raised.

A motion was made by Mr. Donaghy to close the meeting.

Seconded by Mr. Jones and affirmed unanimously.

However, Mr. Mr. Nichols approached the Chair and said they had been waiting to make a presentation.

5. Chair Aboud reopened the meeting for Public Comment:

Mr. Nichols presented a survey map of Racoon Road showing that the Matheson survey is invalid. The map indicated the 50' right away. He said it verifies that the road was situated within the 50 ft right away. He believes this shows the Homeowners ownership is grandfathered, justifying the placement of the culvert. The map disputes the Matheson's "bogus survey".

Mr. Nichols and his accompanies had a long discussion with Mr. Ellis about what the next steps should be to have the map declared "official". Mr. Ellis suggested that they consider coming to the Planning Board for an amendment to the Subdivision documentation making it an "official record". CEO Deane got involved and said the map was all they needed to do the work (fix the culvert) and he would file it with their SZO work permit.

6. Adjournment:

Mr. Donaghy made a motion to adjourn the meeting, seconded by Mr. Jones at 8:13 p.m.

Carried Unanimously

Respectfully submitted,

Kash Aboud
Temporary Recording Secretary