

**Town of Cushing
Planning Board
Minutes of Meeting
Wednesday, July 12, 2023**

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

Board Absent: None

Staff Present: Matt Deane, CEO

Others Present: Ben McCall, Esq. (Legal Representative for the Board), James A. Hopkinson (Legal Representative for the Applicant), John Cunningham (Legal Representative for some of the Abutters), Jim Boyle, (Project Manager for Water's Edge), Andrew Hedrich, (Gartly and Dorsky Engineer) and a number of members of the public came. See sign-up sheet attached.

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

2. Approval of Minutes: Chair Aboud asked for comments about the draft minutes for the June 7th meeting. No comments were forthcoming.

Austin Donaghy moved to approve them. Jay Jones Seconded. **Motion Carried unanimously.**

Board Member Patrick Walsh recused himself.

3. Agenda Items:

A. Open Public Hearing for Water's Edge Subdivision

1. Chairman Aboud asked Andrew Hedrich to BRIEFLY review the project and to specifically mention changes since the last submission. He Replied:

-The Road commissioners denied an Access permit for shared entrance location because it was 24 feet short of required sight distance; and the town didn't want to entertain the suggestion to put signs to slow traffic

-They will now put in a third entry permit to Select Board which will be directly across from the house across the street

-He said they submitted a supplemental packet to PB showing new plan for the road, fire protection cistern. An Environmental 3rd party review determined that no additional studies were necessary.

2. Chair Aboud asked for questions or comments from the Board and the Public but offered Some guidelines:

- Raise your hand to be recognized by the Chair
- Stand and say your name and “standing” (i.e., abutter, Cushing resident, other)
- There are a number of people who want to speak so I’ll ask you to be careful of the time you take. I’ll let you know if you need to yield the floor.
- Please don’t repeat what people have already gone over, just say you agree.
- Comments should be directed to me, and I’ll redirect questions to the appropriate person for response. We don’t want to engage in back-and-forth conversation between two people as that invariably leads to taking too much time and often digression from the matter at hand.

B. Public Comment

• Robert Graham:

- road entrance has been a concern~ opinion of a road safety expert should have a say in entrance (Chair Aboud said SB turned down their application for a road entrance and they now don’t have one).
- Common area is a hazardous piece of property to use as such
- Wet piece of land, erosion on the shore should be addressed, test pits should be reviewed by qualified engineer
- Shouldn’t do anything negative to people already living there (drainage, etc.). Where is the money for the maintenance of all that?

• Mr. Cunningham, attorney for neighboring owners:

- Some things overlooked~ PB should also make sure subdivision doesn’t negatively affect neighboring properties (e.g., public roads- Section 6 1A p. 21)
- Neighbors are concerned roads will be potentially dangerous for them because it’s already twisty, but now applicant wants to add a few loops, and has drawn crisscrossing roads
- Applicant doesn’t have the legal right to put stop signs on existing easements, only the new ones they build
- Talk of altering the grade~ water would run down it, so we need an appropriate expert to check it– will it make it worse for existing homeowners (cites -H Stormwater Management p. 20) “Storm water shall not adversely affect neighboring property”. The proposed system is underground pads and need to be maintained every 5 years. This requirement may have an adverse effect on the current neighbors and the town won’t have responsibility because it’s on private land. Finally, the latest map showing the road indicates the current owners would have to drive the turnaround clockwise (the wrong way).

• Mr. Hedrich responded to stormwater management and road questions:

- DEP engineers review samples and provide a permit for the proposed design affect that the system collects and treats 75% of the runoff. They monitor the plan and every 5 years contact the Homeowners Association that maintenance is required and will ask them to hire an engineer and send them confirmation it was done.
- Permit conditions require a long-term maintenance plan
- There are a lot of protections in place; Every five years they need to recertify the stormwater treatment & homeowners association will need to hire an engineer to come

review it

-Pad areas are 18-inch-deep pools that are dry and vegetated. When there's a storm the pool fills up and it filters into a pipe which is discharged out - called low impact treatment because the pool will show no signs of discharge

• **Mr. Cunningham responds:**

-We don't have the DEP permit in hand, if you did I would second it.

-In its absence, you (*the Board*) don't have what you need

• **Patrick Walsh:**

-There are no permits in place. Much of tonight is governed by the Shoreland Zone Ordinance.

-Suggests that this is a premature consideration because regulations say the permits already need to be in place

-The Board can't make an intelligent decision about compliance unless it has all the information mandated by the ordinance and the Board does not have any guidance from State and Federal agencies.

- The applicant has the burden of proving compliance. It doesn't get any clearer. To do it tonight is not appropriate.

• **Jay Jones and Austin Donaghy** agreed with Patrick's opinion that this is premature.

• **Mr. Ellis:**

-I want to understand what was meant in a confusing paragraph in an e-mail from Mr. Hedrich to the Chairman on June 27: "I would love to start the Compliance Review component with the Planning Board to learn what revisions and additional information will be required before receiving preliminary approval. Once we get through this stage, we can then finalize our permit application to the DEP and Army Corps of Engineers."

-we've been led to believe the Applicant has had a gag order on us answering questions about compliance, but the Board could tell you what you're not in compliance with if you want to know.

• **Mr. Hedrich:**

-Subdivision Regulation doesn't require permits to be completed before preliminary review

-Next step is the preliminary review

-We want feedback from each section

-We are not anticipating an approval stamp tonight

-We know they're insufficient until they get the permits

• **Mr. Ellis:**

The Board should vote on how to proceed after the public comment.

• **Mr. Cunningham:**

-The applicant knows the application can't be approved in its current state

-The abutters don't want this to be the only time to have public comments when things may change based on needs for permit

-We should call this a preliminary public hearing and come back and talk about the next permit

• **Aurora Northgraves:**

- I have climate change worries, increased rainwater in the town
- Vernal pool studies from last year aren't helpful since this year is wetter, so they shouldn't be used. This is significant to understand the aquifer and drinking water impacts.
- What will this one little chunk of land look like in two years if climate change rain keeps increasing?

• **Richard Hartzig:**

- I have concerns about the critical habitat study~ environmental engineers did it instead of wildlife biologists
- Fire safety: Will sprinklers be required in the houses?

• **Chair Aboud:**

In the plan now every house needs sprinklers. It's in the deed covenants.

• **Mr. Boyle, Project Manager:**

- Habitat study and the vernal pool study were done by wildlife biologists

• **Chair Aboud:**

In our interpretation of the "either or" in the Regulation, it's the fire chief who gets to decide about the sprinklers or other fire suppression measures.

• **Clarence Flanders, Fire Chief:**

- I would like every house to have sprinklers to buy them extra time to evacuate
- A 30,000-gallon tank system on site would give us 30 minutes of water to have time to send a truck to get more and for mutual aid to show up without us stopping the fire fight. The 10,000 gallon one proposed is not enough.
- if the fire starts in the attic or garage or in the woods, a sprinkler system won't do any good.

• **Gene Lukianov:**

- What kind of flow requirement will these sprinklers need?

• **Mr. Hedrich**

- You need a certain sized tank like 80-100 gallons in your residence that also has a backup generator as required by the state. That will be in the deed covenant. I'm not a water expert but I think you need 5 gal/min for a house.

• **Chair Aboud:**

Mr. Hedrich, how do you feel about the Chief's request for the 30,000-gallon tank instead of 10,000?

• **Chief Flanders:**

The 30,000-gallon cistern will help buy time, like 25-30 minutes, until the mutual aid arrives. The HOA will maintain it.

• **Chair Aboud:**

I sent you (Mr. Hedrich) a copy of what verbiage we used before in another subdivision when an HOA agreed to bear the cost of maintenance.

• **Mr. Hedrich:**

We'd love to say yes to the 30,000-gallon cistern, but it's up to the owner. It's about \$75,000, but fire safety is important.

• **Chair Aboud:**

During the site walk, there was some discussion about turning a wetland into a fire pond...

• **Mr. Hedrich:**

No, Nathan, the DEP guy, said no because it doesn't meet the treatment requirements. DEP won't let you use a fire pond in one of their fire pond designs. It used to happen often, but in the last 15 years it's changed. You have to collect all the storm water to one site, treat it before discharging it. You can't design a pond large enough that it will function properly.

• **CEO Deane:**

-The flow rate for sprinklers is 13 gallons per minute, as per the State Fire Marshal's website

• **Mr. Ellis:**

-The SD Regulation requirement is for 150,000 gallons, not just 30,000. That's one consideration. But during the site walk, you were in agreement for 3 10,000's. That would be better for the owner than preparing three sites, access, roadway improvements, turnarounds, etc.

• **Mr. Hedrich:**

-We understand, I can't speak for the owner

• **Mr. Ellis:**

-My concern is that three towns will respond with three trucks and that'll be a cluster - Clarence, do you think generators are good to have with sprinklers

• **Chief Flanders:**

-Yes, they'll be mandated to

• **Patrick Cardon:**

- I've come to the meeting a little late, but on the radio, I heard the State of Maine just declared that we must be really cautious about the weather that we'll experience in the future.

-We have to look ahead and not just meet the bare minimum requirements of today.

• **Robert Graham:**

-Words have serious meaning. Mr. Walsh read Must and Shall, NOT May.

4. Close Public Hearing for Water's Edge Subdivision

- **Chair Aboud:**

Ok. Are there any more questions or concerns? Hearing none, I close this portion of meeting and reopen Planning Board meeting (time is 6:52 pm)

5. Water's Edge Subdivision Preliminary Compliance Review

- **Mr. Donaghy moved** that it's premature to do this and not to go ahead with this review since the Shoreland Zone Ordinance requires permits to be complete.
-People have asked us for our opinions on these matters: we don't give opinions. We just check boxes.

- **Mr. Jones** seconded the motion not to go forward.

- **Chair Aboud:**

-Any Discussion?

- **Mr. Ellis:**

-I want to clear the air about the deficiencies so the applicant can move forward and come back with everything they need. This is more like a pre-app discussion. (To Mr. McCall) Is there a procedure for doing this conversation?

- **Mr. McCall:**

-There have been a number of concerns raised tonight, but I agree with the sentiment to get feedback.

-Applicant stated that they don't expect approval tonight

-I don't think it's inappropriate to provide feedback for the applicant's questions, and it's better to do it in an open forum/public hearing

-Look at the Subdivision Checklist and give feedback. If the plan changes substantially, do another public hearing.

- **Chair Aboud:** (to Mr. Donaghy)

-Would you amend your motion to provide feedback?

- **Mr. Donaghy:**

-Yes

- **Mr. Jones** agreed to Second the amended motion.

Motion Carried unanimously.

- **Chair Aboud:**

-Instead of doing a compliance review, we'll go through and provide feedback on the major things we have difficulty with

- **Mr. Donaghy:**

- The one thing bothers me. If road gets approved, you (the current residents) are going to be going the wrong way around a roundabout.

- **Andrew Hedrich:**

- There are 2 sections that won't align with the existing road, so there will be 2 separate entrances

- There's a section that's not ideal for lots 3 and 4, but we'll put up yield signs when you enter either side of the existing road

- The cul-de-sac by lot 6 will be two-way, and it's big enough to handle that. It's about a 50-foot section.

- The Developer would like to have a shared road, but the current users want to use their existing road

- **Mr. Donaghy:**

- Will certain residents use certain sections of the road?

- **Mr. Hedrich:**

- No, but the existing homeowners like their road and the developer can't do anything about that

- **Mr. Cunningham:**

- We need to look at this next version of the plan. Maybe it'll be fine, but if it has any of the problems like we pointed out then we'll have issues.

- **Mr. Ellis:**

- To the people who come to these meetings, it would appear that we're not digging into the specific issues in the application, but we will get to that. The applicant has requested us to wait, but we eventually will discuss all those details. The things that have to be worked on are the 75 ft setbacks at stream crossings, new entrance permits, and we agree that State and Federal permits need to be obtained. We want the content of the permits, not just the stamp of approval. We will dig into how they get their approvals. All safety and environmental considerations. The set back issues, and entrance permits are number 1.

- **Mr. Hedrich:**

- Can you point out the areas of concern

- **Mr. Ellis:**

- The three stream crossings at the entrance and at the end of the road. I'd like Matt's input on existing roads and stream crossings and what requires review and what doesn't.

- **CEO Deane:**

- The streams are an exemption because they're existing stream crossings

- **Chair Aboud:**

- The one in lot 1 and 2 are exempt but the one in 17 and 18 are not?

• **Mr. Ellis:**

-Oh, (to Matt) I misunderstood. I thought you said if existing stream crossings were altered, they also would also have to follow current rules for setback as do new crossings.

• **Mr. Hedrich:**

-Yes, we have to review the one at 17 and 19 with the Planning Board

• **Mr. Jones:**

-The road rises a lot in one spot. What is the grade permitted for the rise?

• **Mr. Hedrich:**

10%

• **Mr. Jones:**

-That road is much steeper than that. How do you propose to deal with that unilaterally?

• **Mr. Hedrich:**

-We'll taper current roads into the new road. We've shown all that on the grading in the drawings.

• **Mr. Jones:**

-You propose to do something, but they can't impede and stop traffic

• **Mr. Boyle:** (testily)

-We're expected to respond to a matter that we haven't even seen before. You voted to give us feedback. We can't be going back and forth tonight.

(Editor's note: I think Mr. Boyle was responding to Mr. Jones reading from Mr. Cunningham's letter that he hadn't seen. There was a short discussion about disclosing correspondence and sending them a copy of it, which was done the next day).

• **Mr. Jones:**

-I understand. But you asked for feedback, and I was raising a concern in order to provide feedback.

• **Mr. Hedrich**

-To keep us on point, can we look through the performance standards to jog your memory?

• **Mr. McCall:**

- I think what Andrew has proposed is a very effective procedure. Going through A-Q and other criteria. It doesn't have to be 100% comprehensive, but the conversation should be between the Board and the applicant. We are no longer in the Public Hearing

• **Chair Aboud:** (Starting with the VI. Subdivision Performance Subdivision on p.16)

-Section VI.A.2., Deed Covenants. I have two suggestions to add to your submittal starting on your P.92:

-First, a thorough description of the cost for stormwater maintenance.

- **Mr. Hedrich:**

- I have a ten pages description in the application, but it doesn't identify the cost which we'll have to add

- **Mr. Boyle:**

- Let's have the covenants in front of us next time

- **Chair Aboud:**

- Second request: Chris Baldwin suggests having a permanent sign on the buffers, so the homeowners don't decide on their own to clear them

- **Mr. Hedrich:**

- There will definitely be buffer signs. I'd love a copy of Chris' letter.

- **Chair Aboud:**

- I'll send it to you

- Section 6C. Any comments?

- **Mr. Ellis:**

- The common area...is that for everyone?

- **Mr. Hedrich:**

- Common area is now called Private Access and Drainage to make sure that's only for the residents

- **Chair Aboud:**

- Section E- Lots?

- Comment on 3A: My reading is that the developable land is the dry land footprint for the lot and needs to be 40,000 sq feet, not that the lot should be 40,000 square feet

- **Mr. Hedrich:**

- All the lots are over 40,000 sq. ft. Let's look at section 6D of Regulation. They do not eliminate wetlands from that description.

- **Mr. Boyle:**

- The way your ordinance reads is that if someone wants to fill a wetland, they can get a permit and do it. It doesn't say that you can't count it.

- **Mr. Hedrich:**

- Lots 3 and 4 will be the ones in contention. We'll include the square footage in the lots so you can see it.

- **Chair Aboud:**

- Any Comments on Ground water?

- **Mr. Ellis:**

- I still have concerns about having 19 more holes in the water table will affect the existing homeowners

- **Mr. Hedrich:**

- There's a specific formula that the hydrologist has done in his 30-page report. He deemed that 19 wells would not be detrimental to the surrounding area.

- **Chair Aboud:**

- Erosion and sediment control? Any Comments? None raised.

- **Mr. Aboud:** Roads?

- **Mr. Hedrich:**

- We are accepting your road width requirement. We have a hybrid of 18 ft wide with 2 feet each on either side of stabilized shoulder that can be driven on.

- **Chair Aboud:**

- On Lot 14, how long is the driveway to somewhere somebody would build a house?

- **Mr. Hedrich:**

- About 200 ft. The eventual homeowners will have to come to the Planning Board. They'll have a condition placed on them to have a turnaround for emergency vehicles.

- **Chair Aboud:**

- And how steep is that?

- **Mr. Hedrich:**

- It's not as steep as it looks. 10% or 12%

- **Chair Aboud:**

- The max is 10%

- **Mr. Hedrich:**

- I'll provide the drawing; I did actually

- **Chair Aboud:**

- Utilities. You mentioned that the utilities will be overhead wires.

- **Mr. Hedrich:**

- CMP will decide what they need for the power demands.

- Can we go back to the road section? I just want to confirm that we've agreed upon the width of the road (18ft) with 2 feet of gravel and 2 feet of grass for a total of 22. We submitted a drawing and specs on it.

- **Chair Aboud:**

- Yes, it meets code. Clarence is that Ok for your vehicles?

- **Chief Flanders:**

- Yes

- **Mr. Ellis:**

- For lots in the Shoreland Zone, the lots have to have 100 ft in width.

• **Mr. Hedrich:**

-Right, as well as the 150-foot circle.

-Also, as long as we work closely with the Fire Chief, the PB is amenable to whatever he decides is necessary.

• **Chair Aboud:**

-Yes. Ok Any other comments or questions?

-Hearing none, let's move on to the next agenda item

6. Correspondence:

• **Chair Aboud:**

We had 3 items of correspondence.

1. A memo from John Cunningham on June 6th~ observations he made on the site walk (July 7, 2023)
2. United States Department of the Interior inviting the Planning Board to join in on the offshore wind project (June 23,2023)
3. E-mail between Chair Aboud and Andrew Hedrich (June 27,2023)

• **Mr. Hedrich:**

I'd like to ask about the cul-de-sac at the end. It's the only location where we have a stream crossing and a 50ft setback issue. We have to cross that stream to get to that peninsula. I wanted to hear your opinions. Do you understand we have to cross that stream to get to those lots. There's a lot at stake here, and we'd like some feedback.

• **CEO Deane:**

-Have you applied for permits yet for that crossing?

• **Mr. Hedrich:**

-Yes, but way back originally. We stopped DEP and have redone some things, so we'll have to resupply the DEP and Army Corps with the updated information. It's a 2-3-foot stream. You need to make it 1.5 x the bank width, so we're looking at about 4 feet.

• **Mr. Ellis:**

-I don't think anything until I hear from the State.

- I think you should make those lots common areas and stop the road before the stream crossing.

• **Mr. Hendrich:**

-I don't think the owner would go for that.

• **Chair Aboud:**

-Those lots (18,19 & 20) are going to have their septic systems piped up. I'd like to see more detail about how you're going to do that.

• **Mr. Hedrich:**

-We'll feed the pipe alongside the road with a sleeve. I'll add some additional detail. It'll be insulated and deep, so it won't freeze.

• **Mr. Ellis:**

-How long do they last?

• **Mr. Hedrich:**

-They are plastic, PVC should last hundreds of years.

• **Mr. Jones:**

-These lots will have easements for that?

• **Mr. Hedrich:**

-Yes.

• **Chair Aboud:**

-Are all the test pits 200 feet from streams or water bodies?

• **Mr. Hedrich:**

-They all meet state plumbing code. It's not 200ft.

• **CEO Deane:**

-With a variance you can come in to 60 feet.

7. Other Business: None

8.. Public Comment

-Does anyone have any comments on anything different: **None**

9. Adjournment

Chair Aboud:

-Can I get a Motion for adjournment?

Mr. Donaghy:

-I move we adjourn.

Mr. Jones:

-I second It

Motion carried unanimously.

The meeting adjourned at 7:46pm.

Respectfully Submitted,

Anya Aboud

Temporary Recording Secretary