

Town of Cushing
Planning Board Meeting Minutes
April 5, 2023

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

Board Absent: Jay Jones

Staff Present: CEO, Matt Deane

Others Present: Representing Water's Edge Sub-division: Andrew Hedrich, Jim Boyle and Jim Hopkinson, Esquire. Representing Vinal Point homeowners - John Cunningham, Esquire.

See attached sign-in sheet for complete list of attendees.

1. Call to Order: Chair, Bill Aboud opened the meeting at 6:00 pm and the Pledge of Allegiance was recited. A roll call was taken and a quorum declared.

2. Communication and Correspondence: The Chair said since our last meeting in March a number of emails have come in. He then read a short description of those items for the record and stated he will make the full body of each of them available upon approval of tonight's minutes. He then read the items of correspondence.

See attached summary of correspondence.

3. Approval of Minutes: Chair asked if there were any corrections or omissions from the March 1, 2023 Planning Board minutes. With no exceptions noted, Mr. Ellis made a motion to approve the minutes as written. Mr. Donaghy seconded the motion and the minutes were unanimously approved.

4. Water's Edge Sub-division Pre-Application Discussion: At this point, Board member, Patrick Walsh recused himself and moved to the audience.

Mr. Hedrich pointed out changes they had made since our last meeting. They eliminated one lot and reduced the road to 16 feet. They said they didn't do this as a cost savings but to reduce wetland impact. The reduction in road width eliminated the need for a waiver for lot #1.

Mr. Ellis clarified that the circle fits now.

Mr. Hedrich also said they moved a section of the road at the request of the Army Corp of Engineers to account for a vernal pool. He then addressed the new entrance, which he said will have adequate sight distance. They will install appropriate signage.

Mr. Boyle added that the change reduces the wetland impact. He then went on to say they would like to have the Planning Board agree to not require the applicant to have all approved permits in hand prior to the pre-application in order to eliminate the back and forth approvals and subsequent changes between the Town and the DEP.

Mr. Ellis referred to Attorney Hopkinson's letter stating that the timing of having approved permits in hand does not necessarily align our SZO Ordinance with the Sub-division Regulation.

Attorney Cunningham interjected to be allowed to address Mr. Hopkinson's comments now and/or later in writing. Chair Aboud said he would like to hear from him now and Mr. Donaghy said he would like comments in writing for the record.

Mr. Ellis pointed out that the timing of getting the permits was important because of built in deadlines between pre-application and preliminary review and the final review. There then ensued a back and forth conversation about why the applicant desired the Town to not require completed approved permits at the Preliminary review. Mr. Hedrich said it is a more efficient use of their time to get the Town approval then go to the DEP for approval.

Mr. Ellis said the Shoreland Ordinance allows for its review at the final stage of the Sub-division review, so whether we review the State permits at the preliminary or the final is negotiable. The local DEP guy (Colin Clark) told us he would come to our meeting so we can get an independent expert. Mr. Hedrich said the DEP permitting process is 120-160 days long and Colin is not a Professional Engineer and will not review the application. Mr. Ellis said it wasn't Colin it was Dustin. Mr. Hedrich said Dustin does permit by rule and is not a PE either. Mr. Ellis said Colin is always helpful and Colin pointed out that the test pits in the storm water buffers were marked SWTP. "I didn't know what that meant and I was happy to get some guidance from him and hoped to get more." Mr. Hedrich said he could guide us.

Mr. Boyle said their goal is to submit an application without asking for waivers and have the Planning Board approve a preliminary plan that they could take to the DEP. At some point, it will take four to six months to get DEP approval so the PB will have time to get all concerns addressed. Mr. Hedrich said that the Planning Board rejected their preliminary plan. Mr. Ellis said to be clear, we did not reject your plan. We asked for the missing submittals so that we wouldn't

have to reject the Preliminary Plan. Mr. Hedrich agreed that the Pre-application is a completeness review. Mr. Boyle said that is when you have a site walk and public hearing.

Attorney Cunningham remarked that our Section 16 F2 requires the PB not to consider the application without approved permits. Attorney Hopkinson responded to Attorney Cunningham's remarks and said the DEP would like to know what the town wants so they would like to get our approval of their Preliminary plan. He stated that they are not asking for the PB to give final approval.

Mr. Hedrich said he was confident they could get 100% of the permits but they stopped the process to deal with issues we brought up about the road. He said they made changes that the PB and the neighbors asked for. Mr. Ellis reminded the applicant that they were instructed by DEP to reroute their road to avoid a venal pool. The applicant then said they would like to come back at the May meeting with a cleaned up plan that the PB can approve. Attorney Cunningham spoke and referred to Attorney Hopkinson's comment about the Burden of Proof that the PB will get at the end of the review process when they give the PB the permits. He asked, "How do you get information to make your review if you don't have the permits?" Cushing's Ordinance says you should have the permits early in the process. Patrick Walsh commented that the Ordinance says you can't review an application unless it includes the approved Permits. If you do what they are asking and do the review without the approved permits, you are setting a precedent and no future applicant will want to get the permits.

Robert Graham then said the current applicant chose to do this project, so they need to follow the rules.

Mr. Hedrich said we are not asking you to review the Shoreland Zone, only do the Sub-division review. They are staggering the review process and want the PB to indicate the Sub-division review is complete.

Mr. Ellis then said we are at liberty to do the SZO review at final; however, we have learned some lessons and while we are aware of the fine standing of Gartley & Dorsky, it is important that we have independent findings of fact in order to serve the people of the Town. We can minimize third party review if we have information from the DEP beforehand.

There ensued a back and forth conversation about the DEP review, including the storm water review. There was also more discussion about the road width. The Chairman said the Shoreland Ordinance requires having permits in advance. He asked Mr. Hedrich, "Does that mean you are asking us to not do a Shoreland review and the Subdivision review simultaneously?" Mr. Hedrich said that is correct.

CEO Deane said he wants everyone to understand that 16 feet is the minimum roadway width. More discussion about the road width ensued and Attorney Cunningham said it doesn't take into account the existing houses on Vinal Point that use the road. Mr. Hopkinson said that PB should not take into account any lots except those in the land being developed. Chairman Aboud asked where does that appear in Section 6 E. Attorney Hopkinson said it doesn't address it; therefore, it should not be taken into account. Chairman Aboud said we are not making any decisions tonight. Mr. Boyle said we do not need an answer tonight; we will bring our proposal to you next time.

Mr. Ellis said I understand 16-foot road is required for a development with 19 lots. Mr. Lukianov inquired how many other lots will use the road. Mr. Hedrick said 9 or 10. Mr. Lukianov asked why they are not included in the consideration. Mr. Hedrich said the road will be wide enough for two vehicles to pass. Mr. Graham said, "My vehicle is 8'9" mirror tip to mirror tip so 16 feet is not generous; especially with the number of vehicles projected to be traveling in and out on the road."

Mr. Ellis then moved the conversation to discuss the waiver about the reduction of frontage for certain lots. Mr. Hedrich then described the two back lots. Storm water management came up next. Mr. Ellis asked about test pits and septic fields. Mr. Hedrich said three lots will have septic systems requiring pumping to a common area not in any of their lots. Chairman Aboud asked if the deeds would include the area where the septic fields are. Mr. Hedrich said yes. Mr. Ellis asked if this was because the lots do not have suitable soil. Mr. Hedrich said yes and agreed to make the maps more clear as to where the septic fields will go.

Chairman Aboud said that while we are on that, a number of the symbols used in the legend are very difficult to distinguish on the map. Mr. Hedrich said he will try to make them clearer. Mr. Ellis also asked him to clarify the steep slope lines, which were covered by little boxes. Mr. Donaghy asked if he could get a copy of the digital files so he can discern the layers. Mr. Hedrich said their data is on Auto Cad, but he would create some exhibits with high resolution to make sure everything is legible. Mr. Ellis said he and the CEO talked with Colin about the shape of the resource protection area indicated on their survey map as being different from what is on our Town map. Mr. Ellis asked Colin if we needed to have a town meeting and DEP approval to change the map. Colin said no, that can be done that at a later time but couldn't be used to hold up approval.

Mr. Donaghy said given our high interest in the entrance to the property, the map doesn't show anything on the south side. Mr. Hedrich said he would amend the map, but that we should know he spray-painted the road so that we could see it. He also said they did not direct the road at the house across the street, but on the hedgerow so lights will not disturb the homeowner. Ms. Northrup asked what if the hedgerow is cut down. Mr. Hedrich said it still won't point toward any house

and he will add the houses to the map to show this.

Mr. Graham showed a photo of the measuring device they used for line of sight. He wanted more information about where it was placed. Bruce White then took offense at the possible stop signs and where they were placed and asked traffic on which road would have to stop. Mr. Hedrich said that they would study it carefully and use yield signs where possible, but safety would dictate proper signage.

Mr. Hedrich then asked the Chairman about his email requesting \$10,000 escrow. Chair Aboud said he discussed that with Mr. Boyle previously and told him we would go with what is in the Ordinance (\$1,000). Mr. Boyle added that they would replenish the money as needed.

5. Other Business: None

6. Adjournment: Mr. Ellis made a motion to close the meeting, seconded by Mr. Donaghy. Motion carried.

The meeting adjourned at 7:30pm.

Respectfully Submitted,

Pat Aboud
Temporary Recording Secretary

Communications and Correspondence Summary

- a. On March 21 we received an email from Andrew Hedrich of Gartley and Dorsky asking if anything was discussed at the March PB meeting about the overlap between the Subdivision and Shoreland ordinances. I did not see this email and did not respond to it. So an apology is in order to Mr. Hedrich. "Sorry Andrew". BTW the answer is no we did not.
- b. On March 22, we received a packet of information from Maine Property Investments as an application for a Driveway/ Entrance Permit. Since this is a matter for the Road Commissioner and that entity is the whole Select Board, we passed it along to them and accepted our copy as a courtesy copy
- c. On March 31 we received an email from Andrew Hedrich attaching a copy of a letter from the law firm of Hopkinson and Abbondanza to James Boyle of Maine Property Investments concerning the Shoreland Zone Permit and another letter from the same law firm to Jim Boyle concerning Road Design standards
- d. On April 4, 2023 we received via email copies of several items:
 - the pre-app for the subdivision at Vinal Point,
 - copies of the two letters from the law firm of Hopkinson and Abbondanza to James Boyle mentioned previously and
 - another copy of the application for the entrance permit.

Full copies of these will be attached to the minutes of today's meeting once the minutes are approved

CUSHING PLANNING BOARD MTG 4/5/23

<u>NAME</u>	<u>ADDRESS</u>	<u>E-MAIL</u>
Alice Northways	57 Hathorne Pl. Cushing, ME	Northways@me.com
Bruce White	PO Box 478 Rockport	BruceWhite875@gmail.com
Wendy Mitchell	PO Box 8, Cushing	
Jim Kington	107 Hathorne Pl. 110	AKENORAY@GMAIL.COM
Richard Olson	246 Pleasant Pt. Rd.	
M. J. Robinson	PO Box 44 Cushing	mjr200@ATT.net
Gene Lukawski	35 Saint Peter Rd Cushing	g.lukawski@comcast.net
Phil Rhinelanders	141 Gagnon Rd. Cushing ME	phil.rhinelanders@gmail.com
Peth Rhinelanders	"	beth.rhinelanders@gmail.com
David White	144 Riverside Dr. Warren ME	
Robert Graham	171 Main St. WARREN 110	robgraham825@gmail.com
John Cunningham	8 Spring St. Brunswick ME	juncunningham@comcast.net
Jim Boyle	25 Dunfree Rd. Cushing	prokody.com
Jim Harkinson	746 High Street Bath ME	jimharkinson@earthlink.net
ANDREW HEDGECOCK		

CUSHING PLANNING BOARD MTG 4/5/23

NAME	ADDRESS	E-MAIL
Aurora Northgraves	57 Hathorne Pt. Cushing, ME	AuroraNorthgraves@gmail.com
Bruce White	PO Box 478 Rockport	BruceWhite875@gmail.com
WENDY MITCHELL	PO Box 8, CUSHING	
JIM RITTER	107 HATHORNE PT RD	ANCORA YACHT SERVICE @ G.MAIL.COM
Richard Olson	246 Pleasant Pt. Rd.	
MJ Robins	PO Box 44 Cushing	mjrob@ATT.net
Gerie Lukonov	35 Salt Pond Rd Cushing	g.lukonov@comcast.net
Philip Rhineland	141 Gagnon Rd Oakland ME	phil.rhineland@gmail.com
Beth Rhineland	" "	beth.rhineland@gmail.com
David White	144 Riverside Dr Warren ME	
Robert Graham	171 MATH ST. WARREN ME	robgraham825@gmail.com
John Cunningham	8 Spring St. Brunswick ME	j Cunningham @ Eaton peabody.com
Jim Boyle	25 Dundee Rd Gorham	
Jim Hopkinson	74 1/2 High Street Bath ME	jhopkinson@bathmaine.com
ANDREW HEDRICH		