

Town of Cushing
Planning Board
Minutes of Meeting
Wednesday, March 1, 2023

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

Board Absent: None

Staff Present: CEO Matt Deane

Others Present: See attached sign-in sheet

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 was declared.

2. Approval of Minutes: Chair Aboud had two additions to the minutes:

- Add Mr. Ray's first name, Derek, to the opening paragraph of item 4.a.
- Indicate that Mr. Robert Graham and Ms. Rebecca White submitted a letter describing their concerns in the last paragraph of item 4.b.

Mr. Walsh made a motion, seconded by Mr. Ellis to approve the Feb. 1, 2023 minutes as amended. Motion Carried.

3. Communications and Correspondence: The Chair then said since our last meeting in February a number of e-mails have come before us. 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).

4. Agenda Items:

Shoreland Zone Application for expansion, 12 N. Carvers Point Lane, Map 27, Lot 22.

Chairman Aboud said, "Mr. Derek Ray is the applicant and he and our CEO Mr. Deane gave us a preview of his proposal at our last meeting on 2/3/23. Nevertheless, I'll ask Mr. Ray to give us a short a presentation as a review and tell us if there have been any changes to the application since our last meeting including if a site has been determined for the well."

Location of well changed- E2 (B?) as far as he can get from the septic design

Went to DEP to put in a permit with the state because the septic pump tank is within 75 feet of the water. Mr. Dustin Door with the State approved it.

Flood plain ordinance issues for Mr. Deane? No issues- out of flood plain

Paragraph sub a. Setbacks don't apply here

Sub b. It's less than 35 feet in height

Motion approved that B C D E F G H don't apply.

Wood chips will be used for Storm water management

Section J: No LPI issues

Motion approved to KLMN do not apply

Section O: A few trees removed for disposal field but that's allowed. Won't open a canopy more than 250 sq feet and regulated

Motion approved that PQRS don't apply

16E: Not all fees have been paid- septic has been, no internal plumbing required- pending tonight's approval the building permit will be paid

16 F2 & F3: Motion approved have been addressed

Motion to accept a permit for Mr. Ray's application granted

Motion that application approval is contingent upon following 16 3 A-I from Mr. Ellis

ACTION: Mr. Jones made the motion to agree to his request,
Seconded by Mr. Donaghy.

The Board then voted unanimously to allow the larger scale.

People in attendance then were given a chance to ask questions and express concerns.

Karin Strong asked if there will be an economic impact statement provided. Mr. Donaghy replied that the Board is under no obligation to provide one, and that the Board's purpose is to make sure that all the rules are followed, nothing more.

Carolyn Ahlstrand asked if the DEP was doing a wildlife study, which Mr. Hedrich confirmed.

John Cunningham, a lawyer representing some of the Vinal Point abutting home owners, wanted to clarify that we were having a pre-app conversation this evening and that a public hearing will be held at the preliminary stage. Mr. Donaghy confirmed there would be a public hearing during the preliminary stage, but warned that concerns between involved parties need to be ironed out before the hearing.

Robert Graham asked if there would be public notification of a site walk. Mr. Ellis assured him it would be posted at least a week before the site walk.

Carol Reber asked about when the next meeting will take place. The Board responded that they would not know until the applicant submits the application.

Mr. Hedrich then wanted to discuss the four waivers applied for, and was told that the Board would look into them at the preliminary meeting, as the Regulation states.

1. Other Business

Motion to talk not about current application but to all future applications. Just want to update terms

Patrick stayed for this discussion

C. Case Law limiting consideration of Private Deed Restrictions

Bob Ellis: MMA's guidance manual has some instruction on this

Relevance of deed restrictions pgs. 27-28 PBM

No legal authority to resolve any title disputes- has been discussed previously- put in record that discussion doesn't resolve any private deed issues

B. MMA Guidance on reviewing Waivers

Subdivision ordinance pg 30 section 8A

We can do this, but it can't nullify the same rectification saying we can

Very discretionary

Pg. 50 instructs us how to go about waivers- zoning variances vs non-zoning variances

Patrick: The MMA needs to say why they decided what they did on the waiver

Parties are all entitled to a definitive statement- needs to be clear why it was denied

Public health, safety, and welfare

Jay: What is the benchmark that needs to be established for it to be considered a legal zone?

Patrick: The town needs to determine, but the Maine shoreland zoning regulation allows town to do something different if its more restrictive than what the state does

Jay: The fact that we have an area that we've designated as shoreland zone is not actual zoning?

Patrick: Yes. That's not what zoning means in a legal sense

Bill: "Zone" is more like "area"

Bob: So that passage doesn't apply to us?

Patrick: Not my decision to make, but I think probably no

Austin: I don't understand something. We have the state shoreland zoning regulation. That's my point. The state is calling it a zoning ordinance. We are allowed to have that ordinance plus more if we want to do.

Bob: Under statute it's called the Minimum Shoreline Statute

Patrick: Okay. It's confusing because Rockland uses a different shoreline ordinance

Austin: They have the same

Patrick: Well, they have a different body of regulations. Zoning doesn't mean the same thing. That's my point

Austin: Zoning and zone are two different things

Bill: What have we gleaned from this

BOB: all we have to go on is: waivers have to protect Public health, safety, and welfare but not nullify the effect and intent of that regulation

Jay: That's almost impossible

Bob: That's why they recommend having specific criteria

Undue hardship. We'll have to fix that one.

Austin: You were looking at the ordinance changes we had. How far are you:

Bob" We're on section 14. Still working

Public comment: Jim: One way to deal with it is as a map overlay. The DEP has the model shoreline zone ordinance chapter 1000 section 38. You have to adopt that one or one more restrictive. Not sure about zoning vs. zone debate.

Deane: Zoning: limited residential, commercial, etc. is zoning.
Zone is an overlay over zoning.

A. Discuss escrow and fee requirements

Bill: Out of date and confusing. Ordinance makes no sense

Bob: Planning Board has authority to change these forms we use without any voting/selectmen dont have to approve except the fee amounts in the fee schedule. In other words, we can make changes to these forms but we cant change the amount of the fees in the middle of an application. Form P5 Schedule of fees & escrow deposits. List of things are a repeat and dont have to do with escrow deposits- \$1000 instead of \$200. Isn't any set amount for escrow deposits.

Bill: If the total cost of project is \$100,000, it would be 5%, if it was \$500,000, it would be 3%.

Maybe we should talk about what the escrow is for

Bob: For legal fees, consulting

Jay: We should create a formula. We need rules that apply to everybody. I talked to Chris Dorian structural engineer and we put me in touch with a lady and they said when you bring in an outside consultant their hourly rate is usually \$100-\$150 an hour. Create a formula but don't cap what we can collect

Austin: We have the clause that says we can collect more if...?

Bill: Asking for money repeatedly will delay them

Bob: Page 29, D there's a section on certification of required improvements (inspectors etc) There's a formula for 2% fees in construction. What do you think of that one?

Jay: All of these need to be made better

Austin: The concept is good though. But nobody is working for \$1,000

Bill: Windmill discussion- bond vs. escrow

Austin: They're 2 different things

Jay: Who's going to establish this formula?

Bill: We are

Jay: It also depends on the kind of ground they're building on- near water vs. not. So formula gets complicated

Bob: P 29. Formula needs to be tiered but as long as it has a replenishing statement..

New recording

Deane: Carleen Dorsky works with other towns as an advisor to the planning board

Bob: You're advisor in Hope seemed knowledgeable

Jay: Firm in Winterport said they'd help

Bill: Jay and Deane would you follow up on that

Bob: Timing for fees is conflicted. P. 8 B1A says escrow payments are due for preliminary review but the shoreland zone says that you have to adopt these fees after a public hearing p 44 with select board approval. Can you guys take a look?

Bill: Here it says the fees but it doesn't say how or when to collect.

Bob: It says if you don't get the payments don't do the review.

Austin: It's clear but it's in the wrong section. We just have to come up with it.

Bib: Do you have any assessments that the \$1,000 escrow payments are wrong? p5

Austin: They're rubbish but we're stuck with it

Bill: We need to have a workshop after we do our research

Public comment:

Jim: Performance guarantee is the biggie. The physical improvements the applicant is going to make. We do a cash escrow and line of credit. A guarantee that's set aside. If it's a cash escrow it's an account that the municipal treasurer has the signature for. It just stays there. Other pots of money: processing fees per lot stay with town. Third pot: third party review. That's what you've been discussing. We recently did a 14 lot subdivision in Midcoast. Ours was \$7500. It got burned up then you notify the applicant and ask for more.

Derek Ray: That's why there's three pots... 16:10

Jim: The code enforcement officer will meet with them out there and make sure things are going okay so you don't have to get lawyers involved with bond payment.

Bob: Professional engineers have to come do an inspection. Do you find there's projects where you need engineers to come in and explain while you're inspecting?

Deane: Yeah there can be both.

Jay: It's not fair to charge the applicant more when we have Matt right here to handle that.

Bill: Agreed

Jim: It's important that the third pot of money is separate from the big pot.

Bill: Jay, let me know when you have your information and we'll schedule a workshop.

Bill: Motion to Adjourn?

Adjournment:

Mr. Donaghy moved the meeting be closed, and Mr. Jones seconded. Motion carried.

The meeting adjourned at 7:12 p.m.

Following Adjournment:

Mr. Hedrich and Mr. Boyle gave a brief presentation on the details of the project for those who were interested in staying.

Transcribed by

Kash Aboud
Acting Recording Secretary

Respectfully submitted,

Patrick M. Walsh
Recording Secretary

CUSHING PLANNING BOARD MTG. 3/1/23

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