

APPROVED 6.12.2017

TOWN OF CUSHING
BOARD OF
SELECTMEN

Minutes of Meeting

May 22, 2017
Cushing Community Center

Selectmen Present: Chair Alton Grover, Martha Marchut, Laurie Haynes, Heidi Alley, and Dan Staples

Selectmen Absent: none

Staff Present: Kate Hoyt, Deputy Municipal Clerk

Public Present: Attorney Kristen Collins, as well as Cushing Planning Board members Dan Remian (Chair), Bob Ellis, and Frank Muddle

1. Call to Order: Chair Alton Grover called the meeting to order at 6:00 P.M.

2. Pledge of Allegiance was recited.

3. Approve and Sign the Warrant:

ACTION: Selectman Laurie Haynes made a motion, seconded by Selectman Martha Marchut, to approve Warrants 22 and 23.

Motion Carried 5-0-0

4. Approve Minutes of the 05/08/17 Meeting:

ACTION: Selectman Dan Staples made a motion, seconded by Selectman Laurie Haynes, to approve the Minutes of the 05/08/17 meeting as amended.

Discussion: The Selectmen commented on the portion of the minutes that dealt with the Waldoboro Transfer Station. If Friendship goes along with the plan, does Cushing have to? (The plan is to create a three-town Joint Advisory Committee to the Waldoboro Transfer Station. The makeup of this Board has not been decided yet, but it could operate independently of the respective Boards of Selectmen while including one Selectman from each Town.) The answer was 'yes.' Upshot: Nothing has been decided, and the issues will be revisited.

Motion to Approve 5/8/2017 Minutes Carried 5-0-0

5. Additions and Changes to the Agenda:

5a. Fixing the Boiler in the Town Office:

Discussion: [See discussion under "New Business," below.]

5b. Request to Go Into Executive Session at the End of the Meeting:

Selectman Dan Staples asked to have on the agenda that the Selectmen go into Executive Session at the end of the meeting, pursuant to M.R.S.A. §405(6)(E), consultation with legal counsel. (No motion necessary.)

5c. Culverts on Spear Mill Road:

Select Board Chair Alton Grover said that culverts on Spear Mill Road needed repairing.

Discussion: [See discussion under "New Business," below.]

5d. Discussion of Legal Document:

Select Board Chair Alton Grover said that a legal document had arrived in the Town Office, sent by Kristi Niedermann, who donated Fales Field as Good Neighbors Park.

Discussion: [See discussion under "New Business," below.]

6. Unfinished Business:

6a. Review the Revised Consent Agreement for Heinz Windzio, Map 028, Lot 018-1.

ACTION: None taken.

Discussion: Selectman Martha Marchut commented that there were people from the Cushing Planning Board in attendance, and she asked that they be allowed to speak during the main meeting, regarding review of the Consent Agreement, before the Selectmen went into Executive Session. Dan Remian, Planning Board Chair, spoke first. He made specific reference to instances of what he saw as unclear/manipulable wording in the Consent Agreement as it stood. Remian said that, in the latest version of the Consent Agreement, there were terms used that could mean different things. He asked that these terms be clarified. He said that, since last November, Windzio's attorney's intent and use of language were what he was concerned about. [Remian's comments are in italics. See Appendix to find items 1-11 in context, marked on pp. 1-2 of the most recent Consent Agreement.]

- (1) "as constructed" – *When studio was constructed, (see property card), there was no deck.*
- (2) "wrap-around deck" – *Now there's a wrap-around deck—and a porch.*
- (3) "living space" – *What do they mean by living space?*
- (4) "use of the studio" – *Strike "use"; use is irrelevant.*
- (5) "residential dwelling" – *What do they mean by this, how does it differ from the auxiliary?*
- (6) "deck" – *Add "and porch."*
- (7) "which will return the status of the studio structure to a conforming structure" – *It will continue to be in violation. The studio was never a conforming structure.*
- (8) "living space" – *Again, what does this mean?*
- (9) "occupied" – *Define "occupied." He has a broad sense of what he'd like to do, there.*
- (10-11) "toilet" – *Put a period after this word and leave out "and sleeping facilities" and the rest of the paragraph. Everything else about him getting a permit is irrelevant because it is not allowed in our ordinance.*

Selectman Dan Staples concurred on (8) in particular, recalling that the original use of the studio was as day use only.

Bob Ellis of the Planning Board then spoke, encouraging the Board of Selectmen to reject the Consent Agreement altogether. A problem with it, according to Ellis, is that there is language about "conformance." He felt it would be a mistake to leave that language in, because, in Cushing's ordinance, "conformance" pertains to grandfathered structures, and the studio in question is not one; it was built

after the ordinance was enacted—making the Windzio case an issue of violation, not of bringing something into compliance. Ellis then said he still hears people referring to this Consent Agreement as somehow involving “estoppel.” “Estoppel,” he felt, was another specific term that was intended to provide relief to property owners who had received improper permits or been advised inappropriately by law enforcement or town officials. In this case, before Windzio bought the property, he knew there were violations. All issues were listed up front before the purchase, except for the deck. At this point, Ellis said, Windzio should have been told by the Town that he would be responsible for these violations. This argument about avoiding estoppel, if the case should go to court, does not apply in this case, Ellis said. He said that Maine Municipal encourages towns to reverse any lax enforcement of ordinances, and the best time to do so is when the property is changing hands. “All applications should be treated the same, starting now. You should not be able to negotiate your way out of a violation.”

Dan Staples thought the Board of Selectmen should not be overly concerned with the cost of a lawsuit now. Even if the Town lost, he felt they should spend money now, to set the correct precedent and get the ordinance language and the issues clear, to avoid spending even more in the future. Attorney Kristen Collins had said, previously, that the Windzio case would not set a precedent.

Selectman Laurie Haynes asked Remian to present to her fellow Selectmen that her husband, Bryan Haynes, was on the Planning Board with Hamilton Boothby, back when the original permit for the studio was issued. She wondered if she should recuse herself from further discussions or decisions regarding this property, whether it was a conflict of interest. Attorney Kristen Collins said there was no conflict of interest. Selectman Heidi Alley asked about the appearance of conflict and was told there was none. Planning Board member Frank Muddle, in the audience, commented that, in any case, Bryan Haynes had not been Laurie’s husband at that time.

7. New Business:

7a. Sign Referendum Warrant for RSU #13.

ACTION: Signed around.

Discussion: None.

7b. (Added) Motion to Appropriate Funds to Fix the Boiler in the Town Office:

ACTION: Selectman Dan Staples made a motion, seconded by Selectman Laurie Haynes, to accept an expenditure in the amount of \$1,330.00 to fix the boiler.

Discussion: Select Board Chair Alton Grover explained that the boiler needed to be fixed, that the cost he had been quoted by Maritime Energy was \$1,330.00. Dan Remian, in the audience, asked if the Town had a maintenance contract. Alton Grover said that the boiler was too old, and was not covered.

Motion Carried 5-0-0

7c. (Added) Culverts on Spear Mill Road

ACTION: None taken at the meeting.

Discussion: Select Board Chair Alton Grover discussed several culverts that need repairing, what the problems were, and how they should be fixed. He put it out to bid to fix two culverts.

7d. (Added) Legal Document Pertaining to Good Neighbors Park:

ACTION: None taken at the meeting.

Discussion: Select Board Chair Alton Grover said that a legal document had arrived in the Town Office, sent by Kristi Niedermann, who donated Fales Field as Good Neighbors Park—a document pertaining to the donation of property worth more than \$5,000.00—from attorney Stanley Patton out of Waldoboro. Town

Attorney Kristen Collins looked it over during the meeting and commented that reference was made in the document to "vacant waterfront lot." She said that the document should be returned for blanks to be filled in—including Map and Lot numbers. Selectman Heidi Alley asked what value the Waldoboro attorney was using. Collins said this was not important, since the Town was not attesting the value.

8. Comments from Citizens:

Frank Muddle addressed the Selectmen in his capacity as representing a group of Cushing property owners who are dedicated to helping Good Neighbors Park develop. Kristi Neidermann, who donated the land for the park, is a member of this group. Muddle reiterated that group's interest in helping the Town by donating funds to the park. He suggested appointing a Town committee. Selectman Laurie Haynes invited him to put together a proposal for the Selectmen to look at. Selectman Heidi Alley concurred. Martha Marchut wondered if a motion were required. No motion was made, and Dan Staples pointed out that the language was in the deed and that the funds should go through the Town. Muddle said he wanted to clarify that donations given as park maintenance are tax-deductible. People ready to donate would like to take a tax deduction. A Parks Committee would make fundraising a lot easier. Martha Marchut suggested explicitly stating that a person on the Board of Selectmen could be a liaison to the Parks Committee, as with other Town Committees.

---Executive Session---

The Select Board entered into Executive Session, pursuant to 1 M.R.S.A. §405(6)(E), consultation with legal counsel, at approximately 7:00. A motion was made by Selectman Heidi Alley and seconded by Dan Staples, to go into Executive Session.

Dan Staples motioned, and Martha Marchut seconded, to enter back into the regularly scheduled meeting at 8:17 p.m.

---The Selectmen rejoined the main meeting at 8:17 p.m.---

ACTION: Martha Marchut made a motion, which Staples seconded, regarding discussion in Executive Session. Motion to authorize Attorney Kristen Collins to add "porch" to every instance of "deck" in the Consent Agreement with Windzio; and to require the after-the-fact permit for the deck to be filed within one year of the date of the agreement. Windzio has seven days to accept this Consent Agreement; the Board will not negotiate any further.

Discussion: Attorney Kristen Collins agreed to send around changes via email to Selectmen.

Motion Carried 5-0-0

9. Adjournment:

ACTION: Selectman Heidi Alley made a motion, seconded by Selectman Martha Marchut, to adjourn at 8:20 p.m.

Motion Carried 5-0-0

Respectfully submitted,

Katherine Hoyt,
Deputy Municipal Clerk,
Town of Cushing