

**TOWN OF HENNIKER
PLANNING BOARD**

Draft Minutes
December 9, 2009

Members Present: Kristin Claire, Chairwoman; Edward Miner, Vice Chairman; Terry Stamps; Rick Patenaude; Jeff Roach, Alternate; Ron Taylor, Selectman, ex-officio; Leon Parker, Alternate Selectman, ex-officio; Scott Osgood

Member Absent: Thomas Howard, Alternate

Others Present: Mark Fougere, Town Planner; Art Siciliano John Healy; Shannon McManus; Jennifer McCourt; Tom Patenaude; Cori Astholz; Jennifer Astholz, Recording Secretary

Review and Approve November 23, 2009 Meeting Minutes

Minutes of the November 23, 2009 Planning Board meeting were reviewed and corrected. Terry Stamps **MOVED** to approve the minutes as amended. Ed Miner **SECONDED** the motion. Motion **PASSED, 6-0.**

Public Hearing: Case #2009-009

Chairwoman Claire explained that a request for rehearing was made by a neighbor to the Zoning Board of Adjustment regarding the height variance that was granted in Case #2009-107 on October 21, 2009. The ZBA is scheduled to discuss whether they deem there is sufficient new evidence to warrant a rehearing at the December 16, 2009 meeting. The applicant has the choice as to whether they would like to pursue the Planning Board process at their own risk. Chairwoman Claire stated that Town Counsel has strongly advised the Planning Board not to make a decision regarding this case tonight.

Rick Patenaude asked what specific legal reasons were cited for not hearing the case. Chairwoman Claire stated that legal counsel verbally advised the Board to wait until the ZBA had made their decision about rehearing the case before proceeding for clarity. Mr. Patenaude suggested that the Planning Board hear the applicant's presentation tonight. Ron Taylor stated that he believes that it would be better for the ZBA to complete their process before continuing with the case. Terry Stamps stated that she would prefer to follow the advice of legal counsel.

Ed Pare, applicant, stated that they would like to continue with the presentation to the Planning Board and believes that the Planning Board should vote on the plans.

Mark Fougere stated that a site walk was conducted on the property a week previously. There was discussion about the stone wall on the left side of the property, and it was determined not to be a boundary marker. Board members also discussed the prospective view of the cell tower from the Eisen's property. Members stated that it is difficult to estimate the tower's height above the trees from that view, especially since they were looking down at the proposed site.

Mr. Pare distributed the certificate of liability insurance, cost analysis and the lease agreement documents to the Board members. He showed an area on the plans where wetlands would have been disturbed; however, the road was moved in order to avoid this disturbance. He stated that the actual tower location remains the same, but the road was straightened a bit (from 701' to 730') and moved 40' – 50' to the south in order to avoid the wetlands area. Mr. Pare stated that the alteration in the road plans occurs outside the fall zone.

Mr. Pare distributed new photographs with superimposed images of various types of towers placed at the site of the balloon test. He stated that the photos give a sense of what the cell tower would look like with different designs.

Chairwoman Claire asked if any substantial trees would be disturbed with the creation of the new road design. Mr. Pare stated that there will have to be some additional clearing for the roadway, but a tree inventory was not done outside the fall zone.

The Board discussed various tower designs. Lattice towers are prohibited in town. It was stated that the monopine design hides the antennae a little bit better. Mr. Taylor commented that the monopine design will cause the tower to blend in better with the surrounding area when viewing it from above. Leon Parker stated that driving in other parts of the country where lattice towers are allowed caused him to change his mind, and he now feels that monopine designs are not a bad alternative to what could be polluting our views. He stated that the negative visual impact of the lattice towers along Rte. 93 is apparent. Mr. Taylor stated that has also changed his mind about monopine designs, and he does not think that they are as bad as he originally thought.

Chairwoman Claire opened the public hearing at 7:47 pm.

Jennifer McCourt asked if the branches of the monopine tower could be made in various lengths to create a more natural look. After further discussion about creating a more natural looking monopine tower, Chairwoman Claire closed the public hearing at 7:50 pm.

The Board discussed how the ZBA's upcoming decision may affect the Planning Board's process in this case. Mr. Osgood stated that anyone has the right to appeal a ZBA decision. However, just because someone asks for a review does not stop the process. He stated that the ZBA will consider the request for a rehearing at their next meeting. Their process should not impact the Planning Board's process.

Chairwoman Claire stated that she would like to postpone the Planning Board vote until the ZBA's position is clarified. Mr. Parker stated that all Town Boards have the ability to make conditional decisions.

Mr. Pare quoted from the Telecommunications Act of 1996, stating that a Town must act in a timely manner. He stated that if the Planning Board takes the position of waiting for the ZBA process, their case could be stalled for months.

Mr. Osgood stated that in the interest of saving time, the Planning Board can proceed with their business as there is no risk involved for anyone. He stated that waiting wastes the applicant's and the Boards' time. He stated that if he knew the reasoning behind the legal advice to wait, he

would be more inclined to follow it. He stated that if the ZBA does decide to change their position, then any approval that may be granted by the Planning Board would be void anyway. Ms. Stamps, however, stated that the Town has hired and paid for counsel to protect the Town's interests and believes they should follow the recommendation to wait. Chairwoman Claire stated that she does not believe that an unreasonable amount of time has transpired yet, so she does not feel that waiting for the ZBA decision would cause undue aggravation to any party.

Rick Patenaude stated that Town Counsel's advice to wait for the ZBA issue is vague and appears to be a safe perspective rather than based on a point of law.

Chairwoman Claire polled the Board members for their position about moving forward or not at this time. They decided to continue.

Mark Fougere recommended that bonding be in place, a no-cut zone be created and demarked in the field so the owner knows where he can cut, and the request for varied branch lengths on the monopine be included in the conditions. Chairwoman Claire suggested disc markers be placed around the perimeter of the no-cut zone.

Rick Patenaude **MOVED TO APPROVE** the application for Case 2009-109 with the following conditions: 1) proper bonding for removal; 2) no-cut zone properly marked; detail of varied branch lengths of the monopine be submitted with the building permit; 3) variance granted by ZBA maintained. Scott Osgood **SECONDED** the motion. Chairwoman Claire stated that she would like to make it clear that the Town Planner follow up and sign off on building permits. **APPROVAL GRANTED WITH 4-3 VOTE.** Scott Osgood, Ron Taylor, Rick Patenaude and Jeff Road voted FOR the motion. Kristin Claire, Ed Miner and Terry Stamps **OPPOSED** the motion.

Conceptual Consultation

Art Siciliano presented plans for subdividing a property owned by John Healy on Ray Road. He questioned if the Board would have an issue with an irregularly shaped lot line design. Mr. Taylor and Mr. Roach both commented that the irregular lot line is designed to achieve good planning of the entire area. Mr. Patenaude stated that he does not have a problem with it, and it impacts the people that live there more than anyone else.

Mr. Miner stated that he prefers lot lines with right angles but understands circumstances when this occurs.

Discussion Items

NEC Wood Pellet Stove Utility-

Jennifer McCourt stated that New England College is considering the installation of a furnace building (approximately 12'x20') and 25' tall wood pellet silo to be the primary heat source for the science building. Mr. Fougere stated that he requested that the silo be reduced to 20' tall so that it will be hidden behind the building. Ms. McCourt stated that the wood pellet furnace is a much cleaner heat source. She stated that NEC received a grant for this project.

Mr. Taylor asked about the amount of noise caused by the auger. Mr. Patenaude stated that promotional videos can be viewed on YouTube, and the auger, which is the feed mechanism into

the stove, is not that loud. Mr. Osgood stated that the motor is what causes the noise, not the auger itself.

Ms. McCourt stated that this is a utility, not a change of use, and is not sure if formal Site Plan Review is necessary. Chairwoman Claire stated that she is concerned about public right-to-know issues. She also stated that this is good publicity for the college that should be made known.

Mr. Osgood stated that NEC is one of only a few private institutions to receive grant money for this use. He stated that the boiler and noise considerations should be reviewed.

After further discussion, Ms. McCourt stated that she would take the information back to the client to discuss whether they would like to request a waiver from Site Plan Review or do the Site Plan Review.

Warner Road Update-

Leon Parker stated that the Board of Selectmen worked very hard to create a roads policy, but it was voted down. The Board of Selectmen will have to work with anyone who wants to do something than what is usually done on a Class VI road.

Mr. Fougere stated that there is a memo from the Conservation Commission about Old Warner Road and what they would like to see. A letter from McCourt Engineering was also received tonight.

Ms. Stamps recommended that the Planning Board indicate to the Board of Selectmen that given the severity of the letter of deficiency (no alteration of terrain permit; no drain and fill permit; approximately 6,500 sqft of land was impacted without permits) that we are not comfortable looking at additional plans. DES has requested additional information to be submitted by January 15, 2010. Given these issues, Ms. Stamps stated that it does not feel that it would be responsible to discuss additional road work at this time.

Mr. Miner and Mr. Osgood stated that the suggestion seems reasonable. Chairwoman Claire stated that some of this seems to be caused by the confusion in Town over the use of Class VI roads. Mr. Taylor and Mr. Parker stated that they are not in a position to comment on this situation.

Ms. Claire stated that she personally feels that this is stemming from the confusion about Class VI roads and the fact that the Town lacks clear guidelines about anything other than logging practices. She stated that she does not believe that there was intentional wrongdoing on the applicant's part.

While this is not a public hearing, Ms. McCourt asked to comment on the allegations described in the letter. She stated that the State decided that the road is contiguous with the gravel pit and must fall under their new laws. She stated that the road is vegetated and stabilized; therefore, erosion control measures are not necessary. She stated that confusion was caused by tying it to Henniker Crushed Stone. Mr. Parker stated that what the applicant did was not done on a Class VI road, but was, in fact, done on their own property.

Ms. Claire stated that she agrees with Ms. Stamps' suggestion that the Board of Selectmen wait until after January 15, 2010 to make a decision. The Planning Board members consensually agreed to have Mr. Fougere write a memo to the Board of Selectmen explaining that they are waiting for the outcome of the January 15, 2010 request for information.

Proposed 2010 Zoning Changes:

- 1) Changes to "Houses of Worship" are clear, and the Board agreed to move this forward.
- 2) "Multi-unit Dwelling Developments": Mr. Fougere created two samples of what would happen with multi-unit dwelling developments. Zoning densities were discussed. Mr. Fougere stated that the CNHRPC will make one map to show Town sewer and water lines. The Board continued discussion about whether to move forward with this zoning change or not. Mr. Osgood stated that there is no pressure to make the change right now, and he wants to avoid people looking for loopholes. Mr. Patenaude stated that it is a way to work with people and promote good planning. Mr. Parker stated that current zoning does not allow for varying the process. Mr. Taylor stated that he believes that this could cause significant change in Town and should be researched more thoroughly. Mr. Osgood suggested the creation of an overlay district. There was discussion about Mr. Fougere drafting a proposal to be read at an upcoming public hearing. The process of using a conditional use permit was discussed; however, it was determined that it would not be a practical mechanism to achieve the desired results.
- 3) ZBA Criteria: This amendment has to move forward as it is mandated by RSA 674:33.
- 4) A paragraph about "Waivers" is proposed to Article XXV, Chapter 133 regarding Wireless Communication Towers. The Board decided to move this forward.
- 5) "Schools" will be included in various zones. The Board decided to move this forward.

Miscellaneous:

The Planning Board will meet next on Thursday, January 7, 2010 at 7:00 pm. Subsequent meetings are scheduled for January 13, 2010 and January 27, 2010.

Adjournment

Mr. Miner **MOVED** to adjourn the meeting at 10:00 pm. Mr. Patenaude **SECONDED** the motion. Motion **PASSED, 7-0.**

Respectfully submitted,

Jennifer Astholz
Recording Secretary

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