

Henniker Planning Board
Approved Minutes

January 23, 2008

Members Present: Jim McElroy, Chairman; Kristin Claire, Vice-Chair; Kellie Dyjak; Terry Stamps; Ron Taylor, Selectman, ex-officio; Gary Guzouskas; Scott Osgood; Cheryl Morse, Alternate Selectman, ex-officio

Guests: Stephanie Alexander, Planning Consultant; Jennifer Astholz, Recording Secretary; Ron Talbot; Eric Hauptman; Ian Johnson; Big Al (as listed on the sign-in sheet); Atty. Tarbell; Ronald Bourcier; Chris Stewart; Peter Flynn, Town Administrator; Martha Sunderland; Tim Lamphere; Dale Jennings; Michele Rogers; Gigi Laberge; Jeff Laberge

Chairman McElroy called the meeting to order at 7:00 pm.

Minutes from the January 9, 2008 Planning Board meeting were reviewed and corrected. Ron Taylor **MOVED** to approve the minutes as corrected. Kristin Claire **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

2008 Town Meeting Public Hearing

Article II Definitions – FENCES. To clarify that all types of fences are not to be considered structures.

Chairman McElroy explained the process for the public hearing. The proposed amendment will be stated and the Board members can discuss the issue. The public hearing will be opened for questions and then opened for public opinion. Once the public hearing is closed, the Board will vote.

Chairman McElroy explained some background history of the fence definition and stated that fire safety issues can arise in pre-zoning situations where houses were built very closely together. Agricultural fences are governed by other regulations. The change to the definition being considered is to allow a property owner to erect a fence on their property line.

Mr. Taylor stated that an internal procedural change will ensure that there will not be any problems with emergency access due to fence placement between adjoining properties. He stated that anyone building a fence must file an application with the Town. The Town office will advance the application to the Fire Department for approval.

Chairman McElroy opened the public hearing at 7:15 pm and called for questions from the public.

Mr. Ian Johnson, resident, asked if the current regulations allow for a person to build a fence on their property line. The Board stated that a fence up to three feet high could be

erected; anything higher would have to go to the ZBA for a variance. Mr. Johnson asked if this change passes, could an 18' high fence be erected on a property line within three feet of an existing structure if it passed the Fire Department's safety review. Chairman McElroy stated that the Fire Marshall has broad authority under public safety.

Cheryl Morse stated that under current regulations, fences have to meet setback requirements and can only be built 15' away from a property line. There was discussion about abutter's not having to be notified and boundary line disputes between parties. It was noted that some towns require a 2'-3' buffer to ease boundary line issues.

The public hearing for comment was opened at 7:25 pm. Mr. Johnson stated that it is not a coincidence that this issue is being brought up now as an illegal fence was put up on Maple Street. Chairman McElroy stated that the Board of Selectmen must hear that complaint, and this discussion must only be concerned with the proposed change to the definition. Mr. Johnson stated that he did extensive research on the background of this ordinance and stated that the wording was very wise as it gave control back to the Town. He expressed his opinion that it would be folly to get rid of the current wording as it would no longer address any fence height requirements. He stated that the problem seems to be only with the downtown area and can potentially decrease property values. He stated that a property owner has the right to ask for a variance to put a higher fence up, but protection from abuse exists. Deleting this takes away the clause that offers any protection.

Mr. Taylor stated that a Town ordinance could be instituted by the Board of Selectmen to govern fences, if needed. Chairman McElroy stated that the definition may have been meant to regulate fences in the Village area.

Mr. Johnson stated that the general public needs help to understand what the proposed change to the definition would mean to them. He stated that most people do not understand that they would lose a level of protection. He suggested that press releases fully explaining the change could be helpful. Chairman McElroy expressed appreciation for his concerns. He stated that a complete published description would be included in the Henniker Herald.

Ms. Morse stated that fences may be able to be handled by a Town ordinance similar to a sign ordinance. There was further discussion about the process and timing of pursuing a Town fence ordinance. It was noted that it would take a minimum of 4 to 6 weeks to possibly pass a new ordinance.

The public hearing was closed at 7:34 pm.

Mr. Osgood stated that Mr. Johnson raised a valid point as the fence causing problems next to his property would be considered a structure to cause the kinds of safety and access issues that it has. Mr. Osgood stated that the RSA does not directly address these types of issues, and maybe more is being inadvertently changed by altering the definition than what was originally thought.

Ron Taylor **MOVED** that the proposed change to *Article II Definitions – FENCES*- be advanced to 2008 Town meeting. Gary Guzouskas **SECONDED** the motion.

RSA 493 & RSA 476 about “Fence Viewers” offers guidance for fence height, property situations, spite fences, etc. Ms. Morse expressed concern for property owners on either side of the fence to have an opportunity to know what is going on. A Fence Viewer committee could be appointed.

Mr. Osgood stated that setbacks in zoning as it relates to fences may have to be addressed.

Chairman McElroy called for a vote on the motion to advance to 2008 Town meeting:
IN FAVOR: 4 (Ms. Dyjak; Ms. Claire; Mr. Taylor; Mr. Guzouskas)
AGAINST: 3 (Mr. Osgood; Ms. Stamps; Chairman McElroy)

Continued Public Hearing

Case 2006-013. A Revised Open Space Residential Development Major Subdivision application for 14 lots to include a Lot Line adjustment has been submitted by Landmark Planning & Development, LLC on behalf of owners Ronald Talbot on Map 1, Lot 354-C at 394 Bacon Road and Hamilton and Merrilee Dodge on Map 1, Lot 354-C1 at 396 Bacon Road in the Residential Neighborhood (RN) District.

Ron Taylor recused himself from this case at 7:55 pm.

Stephanie Alexander, Planning Consultant, read the timeline of events as follows:

- 1) On January 9, High Intensity Soils report and Map were provided by Applicant to Planning Consultant and HTA. Consultant requested HTA review HISS;
- 2) On January 11, a revised January 2008 plan set was delivered to Planning Consultant and HTA to prepare for 1/15 meeting;
- 3) Applicant, HTA & Planning Consultant met on 1/15 & 1/18 to go over outstanding items and to discuss status of January 2008 plan set;
- 4) On 1/15, HTA provided a letter stating the HISS documents are consistent and they have no issues;
- 5) Applicant, HTA & Planning Consultant met on 1/18 to complete review of outstanding items and the January 2008 plan set;
- 6) Alteration of Terrain Permit was received on January 18;
- 7) Planning Consultant drafted 1/18 Status Report and emailed it to Board;
- 8) HTA provided review of January 2008 plan set on January 21;
- 9) HTA’s 1/21 review was provided to applicant, and they have revised the plans.
This is what is before the PB tonight;
- 10) State subdivision approval was received on 1/22;
- 11) Revised easements were provided on 1/22 & 1/23;
- 12) Highway Superintendent provided letter of assent on 1/23;

- 13) Planning Consultant checked HTA's 1/21 letter with Status Report and determined some items to be complete;
- 14) After consultation with Chair, more items were determined complete. Planning Consultant developed PB Action List for 1/23 Board consideration;
- 15) Board to review new plan set submitted 1/22 which incorporates HTA's 1/21 comments and 1/15 & 1/18 comments;
- 16) Board to review Talbot PB Action List 1/23/08 and disregard packet.

The Planning Consultant stated that HTA has not seen the most recent plan set made available tonight.

The Board reviewed the Action List prepared by the Planning Consultant.

Item 1) There was Board discussion about having HTA review all drainage issues and they compared the Action List to HTA's 1/21/08 letter. The State Alteration of Terrain permit has already been issued so those do not require further review. It was the consensus of the Board that HTA review the new plan set regarding drainage issues (specifically #13, 17, 20 & 23) raised in the 1/21/08 letter.

Chris Stewart, applicant, stated that they met with HTA just after the letter from DES was received. Major revisions to plans had to be done in order to obtain the State Alteration of Terrain permit. HTA last reviewed the plan set just prior to this most recent set. Any revisions were done in response to HTA's 1/21/08 letter.

Ron Bourcier stated that HTA did not comment on the HydroCad model showing drainage flow. The January 2008 plan set submitted to DES for the Alteration of Terrain permit included all requested drainage changes. There was a question from HTA about the pipe across Hauptman Way at Station 16+25. The Alt. of Terr. Permit approved the steeper pipe (18% relative slope). HTA felt this was too steep, so it was redesigned to 8% slope with a catch basin. This request was made on 1/18/08 and the modification is shown on the recent plan (#17 & 19 in HTA's 1/21/08 letter). The length of the culvert at Sta. 16+80 (#18 & 25) have not been modified as they were tied to the wetlands crossing permit. Wing walls were requested and modified at that section. Mr. Bourcier explained that the EPA stormwater permit cannot be pulled yet.

Mr. Bourcier addressed the items listed in the 1/21/08 HTA letter.

1. The note was changed to add rip-rap protection on the plan.
2. HTA asked for individual cross-section of that area, and it was felt that this is not necessary. The plan shows where the guardrail is involved and all necessary information is shown in more than one place. This would provide a cross section every 50 feet but it is only a 60' long road. Regarding the 60' common driveway, the drawing shows standard cross section with guardrail, side slopes and drainage (Sheet SD.1). Road profiles with extensive information are provided on Sheet 3.3; blown up drawings of the area shows grading and all necessary construction information.

3. Plans have been changed to reflect the revised driveway landings and transitions have been softened to address concern.
4. Plans have been revised to reflect the appropriate shoulder break (Sheet SD.1).
5. Full 50' ROW issues. Planning Board has not approved this yet (Lot Line Adjustment with the Dodge's property).
6. Hauptman Way turn-around geometry is unchanged.
7. Survey datum discrepancies have been corrected.
8. Guardrail detail is shown on Sheet SD.1. The end of the guardrail is extended to Station 19. Station 18+50 was at the wrong location and was corrected.
9. Stabilization of roadside slopes and backslopes: Plans were modified to correct discrepancies. Added 45-degree wing walls and put Tensar Geogrid to hold the roadway embankment. This is tied to Item #24. HTA recommended concrete culvert; Mr. Bourcier stated that galvanized steel is acceptable. The Board requested HTA to specifically review this item.
10. Pipe type and insulation at culverts with less than specified minimum cover: Mr. Bourcier stated that plans are modified to add 2" rigid insulation with 3' of cover. HDPE cover only requires 12" of cover. He said there was no need to replace it with ductile iron. They are requesting a waiver for the ductile iron pipe. He stated that they have planned 1 12" diameter pipe (replaces 8" PVC pipe) and 2 18" pipes; both with a 3' cover. As a culvert has both ends open, he does not believe they need insulation. Mr. Osgood stated that he believes this is in consideration of the ground freezing, not just to insulate from water freezing in the pipes. Mr. Bourcier stated that there is about 40' of 12" pipe and 40' length of 18" pipe; HDPE pipe is adequate for this use.
11. Driveway sideslope stabilization issues: Done
12. Ditchline erosion protection with ditchline profiles of 4% or greater: Mr. Bourcier stated that stone was added at Station 13+50 to Station 14+50. He stated that what HTA requested has been provided.
13. HISS map and soils report: They have met with a soils scientist and it has been modified from category A to C. Alteration of Terrain permit reflects this.
14. Culvert at Sta. 13+50--Done
15. Driveway culverts at Sta. 15_00 RT and Sta. 15+50 RT.--Done
16. Bridge classification of arch culvert at Sta. 12+50--Done
17. Discrepancies between plan and profile drawings and requirement for outlet protection at detention ponds.—Done
18. Length of culvert at Sta. 16+80. Applicant stated that they did not lengthen pipe but added wingwalls and stone for slope protection.

19. Pipe slope and water velocity in Sta. 16+25 culvert—Done
20. Detention pond outlet structure orifice trash racks. Mr. Bourcier stated that orifices less than 6” need a trash rack. This has been labeled on the plans.
21. Requirement for underdrain and underdrain details. These have been shown on SD.1. Sheet 3.1 shows underdrain construction from Sta. 9+50 to Sta. 12+10.
22. Easements and construction outside of the ROW. Applicant has asked the surveyor to develop another sheet to enlarge views.
23. Requirement for updated HydroCad model and updated Drainage Report—Done
24. Arch culvert concept, anchorage, structural strength and thickness—Done
25. Wetlands Permit—Done (No revisions to this permit)

Ms. Alexander will communicate the Board’s concerns to HTA. The HydroCad model was reviewed by the State for the issuance of the Alteration of Terrain permit; therefore, the Board did not feel it was necessary for HTA to review that again. Items 9, 10 and 24 are to be specifically reviewed by HTA.

The Board continued review of the Planning Consultant’s Action List:

*DR-23A: Functionality of detention basin outlet at 13+50. Verify that this is contained in the HydroCad model and was included in satisfying the Alt. of Terr. permit.

*DP-7: fertilizer and pesticide mitigation measures: Atty. Tarbell stated that every property eventually drains into larger bodies of water, and this subdivision should not be targeted for specific mitigation efforts. Martha Sunderland, a representative of the Conservation Commission, stated that they would like to see that slow-release fertilizers be utilized and awareness of recommended practices be stated. Ms. Morse suggested that the Conservation Commission draft proposed language that could possibly be used in future Homeowner’s Association documents. Chris Stewart stated that a more appropriate place would be in the Town ordinances and should not be a requirement of this subdivision.

*CC #3: Homeowner responsibilities of maintenance. Discussion by the Board resulted in removing the reference to the Town of Henniker Planning Board in paragraph 2, sections (h), (i).

Mr. Osgood brought up the issue of having already voted on completeness of the application and stated that reviewing the minutiae is not necessary. Chairman McElroy stated that this is a complex application and more information has come forward to be reviewed. Atty. Tarbell stated that several issues, such as the bond estimate, could be

listed as conditions of approval. Mr. Guzouskas stated that the applicant and the public have returned for an excessive number of visits, and a list of conditions could be added to a vote for approval. Ms. Claire stated that the Board needs to attend to the requested waivers before voting on approval.

Chairman McElroy stated that they will complete the review of information, review requested waivers, open the public hearing and begin the process to reach a decision.

*CC #4: Structures in the open space: Mr. Stewart stated that there is an existing sugar house on the property. This is to limit any new construction.

Mr. Tarbell stated that the old version of the Declarations & Covenants was included. Mr. Guzouskas found a copy of the revised document and the Board stated that version was acceptable.

It was noted that Dale Jennings submitted two letters to the Planning Board stating concerns about traffic count and snow removal issues; and Gigi Laberge submitted a letter requesting Planning Board denial of the subdivision due to hazardous road conditions.

Chairman McElroy declared a 5-minute recess. Meeting reconvened at 10:10 pm.

Waiver Items:

HTA #13, RP-4B (10), depth of cover, etc. should be 4' cover according to regulations, etc.

Ms. Morse **MOVED** to grant appropriate insulation and ductile iron as recommended by HTA. Ms. Claire **SECONDED**.

The Board discussed the basis of their recommendation. Mr. Stewart stated that the insulation will help frost from getting down around the pipe causing problems.

IN FAVOR: 5 (Ms. Dyjak; Mr. McElroy; Ms. Claire; Ms. Morse; Mr. Guzouskas)

AGAINST: 2 (Mr. Osgood; Ms. Stamps)

(Waiver granted 5 – 2)

HTA #29, shared driveway slope at 12%, other drives 11.5%.

Mr. Guzouskas **MOVED** to grant the waiver from Section 202-11D for 60' segment of shared driveway that services Lots 7, 8 & 9 to be built to Town standards. Ms. Morse **SECONDED**.

Mr. Osgood stated that he walked the site last spring, and it was a mess from all of the heavy rain. Mr. Bourcier stated that there is actually only about 20' of 11.5% slope since the driveways' curve radius was softened which changed the slope.

IN FAVOR: 4 (Ms. Dyjak; Mr. McElroy; Ms. Morse; Mr. Guzouskas)

AGAINST: 3 (Ms. Claire; Mr. Osgood; Ms. Stamps)

(Waiver granted 4 – 3)

26 (4) & RP-3 (9), 10% road grades between 13+81 & 14.25

In order to open discussion, Ms. Claire **MOVED** to grant the waiver from Section 202-11D from Sta. 13+81 to 14+25 to allow 10% road grade from the 8% requirement. Mr. Guzouskas **SECONDED**.

IN FAVOR: 2 (Mr. McElroy; Mr. Guzouskas)

AGAINST: 5 (Ms. Dyjak; Mr. Osgood; Ms. Stamps; Ms. Claire; Ms. Morse)

(Waiver denied 5 – 2)

Mr. Osgood stated that this creates a dangerous intersection, and there is nowhere to go with guardrails and no sidewalks in place.

32 (4), septic design applications required per 202-9V

Mr. Osgood **MOVED** to grant the waiver as requested. Ms. Morse **SECONDED**.

Septics are regulated by the State. **PASSED UNANIMOUSLY**.

(Waiver granted 7 – 0)

At 10:54, Chairman McElroy reopened the public hearing. Ms. Dyjak left the panel at 11:00 pm.

Gigi Laberge, resident, asked for clarification of the Planning Board's and Board of Selectmen's responsibility of roads and intersections. Ms. Morse stated that responsibility of planning for safety in accepting design of the intersection for this subdivision resides with the Planning Board and the Town Engineer. By approving the plan, the Board would be implying that the intersection is safe and would be recommending to the Board of Selectmen to accept the road. The Board of Selectmen is responsible for modifications to existing Town roads.

Tim Lamphere, resident, asked if the applicant would have to go back to redraw the line of the 43.7' section of road to meet Town standard of 8% slope. He asked if the Board could approve the entire subdivision plan with that waiver request having been denied. There was discussion about it being a substantive change to the application versus making it a condition of approval.

Dale Jennings, resident, stated that the subdivision not being in the best interest of public safety should be enough justification to deny the application.

Michele Rogers, resident, stated that she lives on the corner and some of the information relating to the line of sight was not presented accurately. She stated that the neighbor has planted trees and plows snowbanks there which drastically affect the line of sight. This was not considered when it was reviewed in the summer. She also stated that there is a known 5-mile loop for outdoor enthusiasts and asked if the road could be widened to allow for joggers, cyclists, kids, etc.

Ms. Morse stated that snow removal must be negotiated in several areas of town, and acknowledged that it appears that the application proposes to put more traffic in a tough spot.

Ms. Claire stated that the idea of widening the proposed subdivision road was discussed with the subcommittee and the fire department; she stated that in her role as a mom, she found the idea of more pavement and no room even more dangerous for pedestrians to travel safely.

Mr. Guzouskas discussed safety concerns, lifestyle and the role of the Planning Board.

Mr. Lamphere asked how the part of the slope protected by rip-rap will affect the land above which he owns. Chairman McElroy stated that the consensus is that modifications will occur in the right-of-way and changes will not impact that land.

Ms. Rogers asked if school buses have been considered. Transportation requirements and kids walking to bus stops were discussed.

Mr. Lamphere stated that the character of the country neighborhood will change by adding retention basins, guardrails, etc. Also, it was noted that there is a great deal of wildlife in the area. He also stated that he is very concerned about water flow off of the developed area to his property.

Mr. Stewart stated that the Alteration of Terrain permit requires proof that no change of runoff will occur.

Ms. Laberge asked who will be responsible for any long-term problems if the development is approved. Homeowners are responsible for the retention ponds, etc. until such time that the road is accepted by the Town of Henniker.

Acceptance of Town roads was discussed.

Ms. Rogers stated that she is most concerned about safety issues and the safety of neighborhood kids. She has already had to call 911 for a bad accident in front of her house and doesn't want to see more people get hurt. Ms. Rogers stated that they all enjoy living in Henniker, but doesn't want to see poor planning impact property values and safety. She also stated that George Howe, another neighbor, has written a letter to the Board stating his opposition to this development.

Mr. Jennings stated that 14 houses will be placed on a 1500' narrow strip of road with no secondary egress. He stated that the authors of the ordinance saw wisdom in 2 egresses. If the road is blocked or flooding occurs, emergency access could be denied to these people. He stated that a second egress was required on the Davison Road subdivision, and this one if more problematic than that one.

Ms. Sunderland stated that she understands the amount of information the Board must consider, but it is not in the best interest of the Town to have this highly engineered, traffic-congested use of this land.

Ms. Laberge stated that she is opposed to this development, and her position has cost her friendships. She understands that the owners have a right to sell their land and the Planning Board has had to deal with many obstacles, including inherited ZBA decisions. She stated that the Board has a right to say that this is not good for the Town, and she gives them permission to deny this subdivision.

Mr. Jennings stated that he has heard the Board comment about fear of a lawsuit; however, if this is turned down, he couldn't think of a better use of his tax dollars than to fight this.

The public hearing was closed at 11:45 pm.

Mr. Osgood stated that the burden to meet approval falls on the applicant, and the application does not conform to road standards.

Mr. Stewart requested an extension to the February 13, 2008 meeting.

Ms. Morse **MOVED** to grant the request for extension. Mr. Guzouskas **SECONDED**.

Mr. Osgood stated that he does not want to grant another extension and feels strongly that the application should be acted upon tonight.

Chairman McElroy stated that he agrees with Mr. Osgood in theory, but the time could be used to communicate with staff and the Town Engineer.

IN FAVOR OF GRANTING THE EXTENSION: 3 (Ms. Morse; Mr. Guzouskas; Mr. McElroy)

AGAINST: 3 (Mr. Osgood; Ms. Stamps; Ms. Claire)

The request for extension was denied as a quorum did not approve it.

Scott Osgood **MOVED** to reject this application based on the input given tonight and the knowledge that it is not right for the area. He stated that good effort has been put forth, but a subdivision should not be in this area. This development essentially creates a dam in the wetlands and a road with high slopes, guardrails, etc. Trying to create an open space development has demanded serious engineering; 14 homeowners will be left with large bills to cover long-term maintenance of 6 culverts, 4 ponds, etc. until such time that it is accepted by the Town of Henniker. Terry Stamps **SECONDED** the motion.

Chairman McElroy reminded the Board that the motion must contain specific reasons for denial. The decision cannot be an emotional issue and must consider the community, the Town and the property owners. The Board discussed references for reasons for denial including:

- No possible 2nd way of egress
- Significant change to the character of the Town
- Water issues, maintenance issues, increased expense to the Town, safety issues
- Soil reports say steep slopes should be avoided
- 202-7B: "unsuitable land": danger of fire/flood with 1 way of egress
- 202-7B1: land of such character that it cannot be safely used
- Master Plan, p. 145, Ch.6: Transportation, pedestrian-friendly roads

- Master Plan, p. 75, Ch. 4: Protection of sensitive areas; placement of road and 4 detention ponds is not protecting natural features.
- 207-B1: HISS map (new soils information)
- 133-119E Open space (undue adverse impact on neighboring properties)
- Portion of the proposed road does not conform to Section 133-120J in that the slope exceeds the maximum slope allowed by the Town of Henniker Roads Standards.
- 202-11D (Subdivision Regulations: 50' right-of-way for roads)
- 133-119D (Recreational Development for Open Space)
- 202-11M Roads (Embankment Standards)

Mr. Guzouskas stated that development questions were brought before the highway safety commission. Recommendations made were addressed by the developer. State agencies are in place to deal with the issues of water flow and they have indicated that plans have met their approval. It is hard to say that the developer has not met the conditions brought before them.

Mr. Osgood stated that he is not disputing that, but the Board can use judgment in determining what is best for the Town planning that State agencies do not evaluate.

Ms. Stamps stated that the Board is responsible for the aggregate view of all of the specialties. While they must be considered, all information can't be put into a set of regulations.

Chairman McElroy stated that the motion must include either an approval with stated conditions or a denial with specific reasons.

Gary Guzouskas **MOVED** to table the current motion until the February 13, 2008 meeting. Ms. Morse **SECONDED**. Motion **PASSED UNANIMOUSLY**.

Chairman McElroy instructed the Planning Consultant to continue the process HTA to review the plans.

Mr. Guzouskas **MOVED** to adjourn. Ms. Claire **SECONDED**. Motion **PASSED UNANIMOUSLY**, and the meeting adjourned at 12:50 am.

Respectfully submitted,

Jennifer Astholz
Recording Secretary