

HENNIKER PLANNING BOARD

Approved Minutes

March 12, 2008

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

Others Present: Laura Scott, Town Planning Consultant; Stephanie Alexander, Planning Consultant, CNHRPC; Jennifer Astholz, Recording Secretary; Irish and Terry Burnett; Ron Talbot; Dorothy Spalding; Joan Taylor; Tim Lamphere; Eric Hauptman; Eaton Tarbell, Esq.; Chris Stewart; Scott and Michele Rogers; Martha Sunderland

Chairman McElroy called the meeting to order at 7:05 pm. He announced that Board member Kellie Dyjak had her baby earlier in the week; therefore, Alternate Edward Miner would be voting in her place on new issues coming before the Board this evening.

Review and Approval of 1/23/08 Meeting Minutes

Atty. Eaton Tarbell called for a point of order and asked to comment on the minutes. Chairman McElroy stated that it is the Board's position that review of the minutes is the Board's business; any comments or concerns pertaining to them can be submitted to the Board in writing and will become a part of the public record.

Corrections were made to the minutes. Terry Stamps, Board member, **MOVED** to approve the minutes as corrected. Kristin Claire, Board member, **SECONDED** the motion. Motion **PASSED UNANIMOUSLY** (6-0; Mr. Miner did not vote on this item.)

Site Plan Review Waiver Request

- Map 2 Lot 157 (83 Hall Ave)

Laura Scott, Town Planning Consultant, introduced the applicants, Irish and Terry Burnett. Ms. Scott stated that the ZBA unanimously granted a variance from the lot size requirement as this is a grandfathered nonconforming lot. It was also noted that no abutters were present and no public comments were heard about this proposal at the ZBA hearing. Ms. Scott explained that the Burnett's propose an owner-occupied two-apartment rental property. She stated that no changes are made to the outside of the building, and there is already an existing parking area. Ms. Scott stated that the property had been used for more intensive uses in the past (minister's residence, fraternity house, apartments, two-family home). Ms. Scott stated that the police, highway, water and fire departments have already signed off on the plan in preparation of the ZBA hearing. The Planning Board is the only agency that can grant the waiver for site plan review.

(It is noted that Cheryl Morse left the Board and Ron Taylor, Selectman, ex-officio, joined the Board at 7:34 pm.)

Mr. Burnett gave a description of the property and stated that no structural changes are proposed. He stated that the sewer would have to be reconnected, but no additional digging or piping is necessary. The

electrical boxes are in place. It was noted that most of the properties abutting this one are multi-family and commercial properties, so this proposal is fitting with the neighborhood.

There was Board discussion about the Site Plan Review Regulations.

Terry Stamps **MOVED** to grant the waiver for site plan review for the property list at 83 Hall Avenue. Gary Guzouskas **SECONDED** the motion. There was no discussion. The motion **PASSED, 7-0.**

Site Plan Review Waiver Request

- Map 1 Lot 553-B4 (133 Buxton Industrial Drive)

Laura Scott introduced the applicants Joan and Brian Taylor. She stated that there was a mistake on the Tax Map which is being corrected. She stated that Lot B4 was only an acre, but the materials in the packet show 2+ acres. Lots B4 and B5 were merged a while ago and the maps have not yet been corrected to reflect this. She stated that this is an existing commercial property with no residential abutters. The applicant would like to use the back end of the property for firewood processing and have one employee and one truck. No onsite sales would be handled there. Ms. Scott stated that this type of work had been done before there, but it ceased two or three years ago. She stated that the fire chief and codes enforcement officer are aware of this proposal.

Ms. Scott stated that the applicant has agreed to the following conditions:

- No on-site retail sales
- 1 employee
- 1 delivery truck on-site
- Property set-backs (30' front, 15' side and rear)
- NFPA 230 Standard for the Fire Protection of Storage 2003 Edition, Chapter 11 Protection of Storage of Forest Products

Ron Taylor, Board member, requested that the minutes show that he is not related to the applicants, Joan and Brian Taylor.

Joan Taylor, applicant, stated that there is currently one piece of property which houses a garage and an office. She stated that Henniker Hardwood Pallet, Michie Corporation and Petro Fiber are neighboring companies.

Ms. Scott stated that the fire department is working with the applicant to ensure compliance with the fire protection standards.

The applicant stated that no burning will occur on the property and nothing will be emitted into the air from this business.

Ms. Scott stated that the property is currently owned by Joan Taylor's sister. A letter from her is in the file granting this request for the property.

Kristin Claire **MOVED** to grant the waiver from site plan review for the property located at 133 Buxton Industrial Drive. Terry Stamps **SECONDED** the motion. There was no discussion. The motion **PASSED, 7-0.**

The Board decided by consensus to rearrange the agenda in order to allow Ms. Scott, Mr. Miner and Mr. Taylor to be excused in a timely manner.

2008 Planning Board Work List

Ms. Scott stated that she has compiled a list of items to work on for the Board.

Mr. Osgood stated that he would rather focus on outlining the goals of the Planning Board. He stated that issues such as encouraging business in the downtown area, reviewing the Education District, pedestrian access (sidewalks) throughout the town, downtown parking and excavation review are issues on which the Board can focus its attention.

Ms. Claire stated that Subdivision Regulations must be addressed. Ms. Stamps stated that the edits made to the regulations last year have not yet been put into effect.

Ms. Scott stated that she will help to facilitate discussions on these items at the work sessions and will review procedural items for the Board.

Ms. Scott updated the member binders. The 2008 NH Land Use Law Books were distributed to the members. Information concerning the OEP conference was distributed.

There was discussion about a letter being co-written to the newspaper from the Planning Board Chairman and the ZBA Vice-Chair.

Ms. Scott, Mr. Miner and Mr. Taylor left the meeting at 8:07 pm.

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.

It is noted that Cheryl Morse re-joined the panel of Board members.

Chairman McElroy summarized the happenings of the last meeting on 1/23/08 as follows: the final set of plans was presented and the public hearing was re-opened. After the public hearing was closed, the board began deliberations. He explained that once the public hearing was closed, no further comments could be heard from the public or the applicant. He stated that there was a motion, and a second, to deny the application; however, a decision of denial requires stated reasons. At 12:45 on 1/23/08, it was moved to table the motion and continue deliberations. Deliberations were to be resumed at the 2/13/08 meeting, but that meeting was cancelled due to bad weather. The next meeting date of 2/27/08 was cancelled due to lack of a quorum. Chairman McElroy re-opened the board deliberations at 8:10 pm this evening.

Chairman McElroy stated that the board first saw the proposal of this development in the fall of 2006. He stated that this development is proposed on a complicated property that contains a narrow corridor which opens to a 40+ acre lot which is characterized by steep slopes and wetlands. A series of plans have been submitted by the applicant; there have been ten iterations of the plans from November 2006 to the last ones submitted on January 21, 2008. That plan was accompanied by an Alteration of Terrain permit, wetlands crossing permit, and the High Intensity Soils Survey (HISS map). Since November 2007, the

Town Engineer and the applicant met to discuss numerous engineering problems. After the long process, the final plan resulted in a proposal of 14 lots along a new road accessing Bacon Road over various slopes and wetlands.

Chairman McElroy called for any board member to add to the description of events.

It was noted that there has always been concern about the steep slopes and impact to the wetlands as challenges that the engineers faced in developing this plan.

At the 1/23/08 meeting there was a motion to deny this application, and the motion had been seconded. The board members had begun working on the language to list the reasons of denial. At the end of this meeting Chairman McElroy asked the Planning Consultant to compile the list of reasons for the denial stated by the Board.

Gary Guzouskas **MOVED** to re-open discussion of the tabled motion to deny. Ms. Claire **SECONDED** the motion. Motion to continue discussing the motion for denial **PASSED, 6-0**. Chairman McElroy stated that the motion is now open for continued discussion. He explained that the motion needs to be amended to include the reasons for denial.

Chairman McElroy stated that there are a number of concerns that arise from the nature of the property itself: a single entrance/exit to the property, steep slopes, wetlands, problematic soil types, etc.

Ms. Stamps stated that the natural topography of this property makes it a challenge to develop as an open-space development. The natural topography reduces the usable land and forces the development into limited areas where the use is considered condensed and intense.

Ms. Claire stated that she has always had concerns about the site, in general, even more than concerns about the open space aspect.

Mr. Osgood stated that the Town's Master Plan discusses steep slopes and lists specific hills to avoid (Chapter 8; p.227); this property is one that has been identified to avoid.

Mr. Guzouskas stated that there has been a great deal of effort in trying to use engineering technology to overcome the challenges that are presented on this property. He stated that he is concerned that it appears that the work presented is viable technology right now, but it is not known if the engineering fixes proposed will still function five or ten years down the road.

Mr. Osgood stated that this type of development is going to require a lot of money, equipment and manpower to maintain. The cost to replace culverts is substantive, and it requires the highway department and Board of Selectmen to fund this.

Ms. Claire stated that the road agent will be expected to do the job of taking care of the roads i.e. plowing, maintenance, etc., but there is the cost of long-term maintenance and pedestrian safety, etc. to consider.

Chairman McElroy stated that the current plan combines road structures, culverts, retention ponds, cuts and fills, traffic plans and drainage plans that all meet minimum standards. Engineering professions work on assumptions about rainfall, floods, etc; traffic plans works on minimum speeds, etc. When you put all of this expertise together, what does that do to the overall impact of each individual issue? This causes concern that engineering is necessary but not sufficient to ensure that this plan will work.

There was discussion about the correlation between highly engineered features and the potential impact if any feature fails. Failure of these engineered features may have an even greater negative impact since it is so highly engineered.

Ms. Stamps stated that if the role of the Planning Board is to apply regulations and use experts (like road agents, fire department, etc.) and that is all, then the Board's input and judgment is not necessary; however, the Board is called to make judgments on the information. Ms. Claire stated that the Board is to make judgment calls and not just check off a list. Mr. Osgood stated that the Master Plan and regulations give the authority to deny a plan that is not harmonious to the land or safe to pedestrians, especially in the winter. He stated that, for instance, a secondary egress is necessary to this plan for safety reasons.

Ms. Claire stated her concern about the road with guardrails and no sidewalks and side slopes up to 68% in some places. She stated that she has shared her concerns from the beginning about increasing the width of the pavement for cars but still not providing safety for pedestrians.

Chairman McElroy stated that a related issue came before the school board last week. He stated that parents (in another development where there is a 10% slope) asked for bus service for their children as the road is too dangerous for children to walk in the winter with snow banks and no sidewalks. He stated that the excellent photographs showing sight distances were taken during the summer and do not take into account snow banks interfering with line of sight. Steep slope issues apply to several driveways as well.

Chairman McElroy expressed concerns for safety with large vehicles i.e. school buses and fuel trucks going from Hauptman Way on to and off of Bacon Road. The intersection at Bacon Road has been a continual concern since the onset of this plan.

Mr. Osgood stated that there were still engineering issues that were not resolved even after 10 variations of the plan.

Ms. Morse stated that this was proposed as an open space development. This suggests that it would provide benefit to the Town but she does not see such benefit. The land meant for open space is not contiguous. There is not easy access to the open space and it limits use of some of the land (i.e. Lot1).

Ms. Stamps stated that open space regulations require that the land must be contiguous; the proposed development is broken up by roads, lots and drainage features.

Ms. Morse stated that a significant portion of the open space in the lower area is wetlands.

Mr. Osgood stated that there were still questions about the conventional plan to see if they were adequate for this open space design. He stated that the road was at a steeper grade on the conventional plan than the Roads Standards allow.

Mr. Guzouskas stated that all of these concerns point to the suitability of this land. He gave an example of other cuts that have been made into hills with subsequent slumps of the retaining features.

The board members expressed concern for the long-term viability of the project. Unforeseen factors, such as extreme weather, could affect the outcome regardless of the engineering.

Ms. Claire expressed concern about the narrow portion of the road near Bacon Road. This is a narrow section of road. The plan shows a 9.6' culvert which creates 68% side slopes. The culvert was unable to be lengthened because of the narrowness of the property which would have caused drainage to flow onto the abutter's property. This is at the area shown on Sheet 3.1, the 50' strip to handle the drainage and runoff (also shown on Tech. 3.2). Sustainability issues arise from the pipestem configuration shown at Detail 4 from Tech. 3.2, section 1+00 and 3+00 on Hauptman Road. Ms. Claire also expressed concern about the cuts and fills on Hauptman Rd. around 12+00 and 15+00 that would require stabilization; this creates a series of needed drainage features.

Mr. Osgood stated that development should minimize impact to natural features of the land. This area is generally unsuitable for this development.

Ms. Claire and Ms. Morse discussed the problems of developing Lot 1 due to drainage features. Much of Lot 1 is subject to sheet flow into the detention pond located on this lot.

Ms. Claire stated that she has always said that steep slopes and wetlands are a serious concern for this parcel of land.

Ms. Stamps stated that they have fragmented the wetlands to get lots around them and have disconnected the open space lots from each other.

Accommodating steep slopes requires cuts, fills and extensive drainage features. These manmade drainage solutions have to be added since the natural features cannot accommodate the development of the property. Long term liability and maintenance of the road and drainage features are concerns for the Town.

Chairman McElroy stated that the Board has identified several categories of reasons for denial of the development: 1) suitability of the property; 2) long-term sustainability; 3) safety; 4) basic open space issues (opportunity to have reasonable space to use).

Mr. Guzouskas stated that he is not convinced that the land that is supposed to be "open" is easily usable. There is a zoning article that outlines open space requirements. The open space is disconnected and access is limited from the lower lots to the upper area as well as the upper lots have limited access to the lower open space area. The open space is not contiguous. Drainage features are located in the open space. Sheet C3.1 details drainage.

Long-Term Sustainability: Steep slopes, drainage features, multiple detention ponds, culverts, and the fact that the road itself is more of a causeway with nothing more than guardrails. If the Town accepts the proposed road, the Town accepts maintenance and is liable for all aspects of maintenance.

Safety: Ms. Claire stated that she has continually raised issues of pedestrian safety along the proposed road with guardrails and steep dropoffs. There has also been a safety concern of having only one way of egress on a 1900' road.

Ms. Stamps questioned the soils information which was provided. Prior to the 1/21/08 plan set, the soils were portrayed to be more porous than what was shown on the HISS map. Results of the HISS map were first seen by the Planning Board at the 1/23/08 meeting.

Ms. Claire re-emphasized that the information put before the Board on 1/23/08 and the HISS map information is important. Ms. Morse stated that the quality of the soil is a big issue considering the steepness of slopes in this area.

Ms. Morse **MOVED** to amend the motion to deny to include the reasons for the denial which are contained in the Board's summary report created from the discussion at the 1/23/08 and 3/12/08 meetings. Chairman McElroy read the summaries of the descriptions under the four headings for the public. Mr. Guzouskas **SECONDED** the motion. There was no further discussion. Chairman McElroy called for the vote to amend the motion to deny with the stated reasons; motion to amend **PASSED UNANIMOUSLY (6-0)**.

Stephanie Alexander, Planning Consultant, read a sentence that the board added to the summary of reasons for denial for the minutes. "If Hauptman Way remains a private road, the responsibility for maintenance would fall to the homeowners. The Town has no mechanism for enforcement of the drainage and would be forced to bear the expense should the homeowners not maintain the drainage features."

Mr. Guzouskas stated that based on personal experience, there have been instances where open space should have been maintained but was not. If landowners default on their responsibility, the cost will fall to the Town. The Town has no way to enforce maintenance of the drainage features and would end up addressing the repercussions and bear the expense of mitigation.

Chairman McElroy called for the vote of the motion to deny with the following reasons:

Suitability

1. The property presented is environmentally and topographically difficult to develop because of slopes ranging to 25% or above, extensive wetlands, a stream bisecting the property, boulder fields, and ledge outcroppings. The series of plans that have been presented have focused on the mathematical outcome for consistency with ordinance requirements but without regard for satisfying the purpose of the regulations. This development is being forced into a site and onto soils which are not conducive for such high-intensity use.

Sustainability and Cost

2. Should Hauptman Way become a public road, as intended by the applicant, the maintenance of the numerous drainage features including multiple detention ponds, slope reinforcement features to accommodate slopes along the embankments up to 68.5%, and the 1,900' long, 24' paved roadway with guardrails, which is raised up to 25' in places, that would be of significant and extraordinary expense to the Town to maintain. If Hauptman Way remained a private road, the responsibility for maintenance would fall to the homeowners. The Town has no mechanism requiring enforcement of the drainage maintenance and would be forced to bear the expense should the homeowners not maintain the drainage features.

Sustainability and Cost

3. The location and maintenance responsibilities with respect to detention basins and drainage control features were a repeated concern of the Board. For example, on Lot 1 the detention basin is an integral part of the lot yet is intended to service the entire subdivision. The basin receives water by sheet flow, not a channel, and consumes a significant portion of the lot.

Safety

4. Subdivision Regulation 202-7.B.1 discusses the suitability of land from the health and safety perspective of natural or other hazards. This self-contained 14-lot subdivision is served by a single access, 1,900' long road ending in a cul-de-sac. A second access should be provided given the multiple culverts, steep side slopes and embankments, the grade of the road, and other drainage features. The single egress constitutes a significant safety risk to residents.

Safety

5. Subdivision Regulation 202-11.D states that the maximum grade of a street shall be 8% or up to 10% with Board approval. The Board denied a waiver for a section of Hauptman Way between stations 13+50 and 14+50 to be built at 10% grade.

Open Space and Master Plan

6. Zoning Ordinance 133-119.A&B state that the development will be consistent with the Master Plan and Subdivision Regulations as well as the Open Space Residential Development Article XXIII of the Zoning. The development is not consistent with the intent of these documents.

Open Space and Master Plan

7. Zoning Ordinance 133-119.D discusses the suitability of open space for recreation or other specified use. The development's open space is difficult to access for many lots, is chiefly unsuitable land with 15% - 25%+ steep slopes, and contains a significant wetland and proposed detention areas. Neither of the two designated open space lots serves the typical purpose of recreation and the two lots are not contiguous as required by the regulations.
8. Subdivision Regulation 202-7.A.2 discusses development contrary to harmonious development as provided in the Master Plan.

Suitability

- a. Master Plan, Chapter 4: Current and Future Land Use, Page 108 expresses the desire for development to protect sensitive environmental features and to maintain rural characteristics in the face of increasing pressure for residential growth. While the development sets aside the regulatory required open space for the use of its own residents, the rural character ends there. A highly engineered and reinforced 24' roadway, created detention ponds and multiple drainage structures, significant alteration of topography, and two wetlands crossings do not meet the essence of rural character and protection of sensitive environmental features.

Safety

- b. Master Plan, Chapter 6: Transportation, Page 145 discusses pedestrian-friendly roads and Page 147 states an Objective to create and sustain safe walking and biking opportunities. Hauptman Way is a 24' paved road with 2' shoulders which is about 1,900', with long straight portions and high embankments with guardrails. No provisions are made for pedestrian and bicycle safety.

Motion to deny the application based on the listed reasons **PASSED UNANIMOUSLY (6-0)**. The application was denied.

Mr. Guzouskas **MOVED** to adjourn; Ms. Claire **SECONDED** the motion. Motion **PASSED UNANIMOUSLY** at 9:35 pm.

Respectfully submitted,

Jennifer Astholz
Recording Secretary