

HENNIKER PLANNING BOARD

Draft Minutes
August 27, 2008
Work Session

Members Present: Kristin Claire, Chairperson; Gary Guzouskas, Vice-Chair; Ron Taylor, Selectman, ex-officio; Jim McElroy; Terry Stamps; Scott Osgood [joined the work session at 7:10 p.m.]; Leon Parker, Alternate Selectman, ex-officio; Ed Miner, Alternate; and Kelly Dyjak.

Others Present: Laura Scott, Planning Consultant; Michelle McGirr, Recording Clerk; and Jennifer McCourt.

Chairperson Claire called the work session to order at 7:00 p.m.

The draft minutes of the 8/13/08 planning board meeting were reviewed and discussed. Specific changes were suggested by various members of the board.

Mr. Osgood joined the workshop at 7:10 p.m.

Mr. McElroy MOVED approval of the draft minutes of the 8/13/08 planning board meeting with amendments. Ms. Stamps SECONDED the motion. It was APPROVED 6-1. Ms. Dyjak abstained due to being absent for that meeting.

Voluntary Merger – Map 1 Lots 350 & 351

Ms. Scott reviewed the merger requested by A&T Forest Products (ATFP). When ATFP purchased the property, they were given one deed. ATFP was unaware there were two parcels that encompassed the deed. ATFP has been taxed on both parcels. ATFP is requesting to merge the two parcels into one. In researching the issue for abutters' notices, Ms. Scott discovered there is only one tax card for lot 350.

Mr. McElroy wondered how it was recorded at the Registry of Deeds. He also asked whether the piece(s) were landlocked.

Ms. Scott said ATFP doesn't believe they have a right of way to the parcel.

Chairman Claire inquired about legal representation when the parcel was purchased and if title work was done.

Mr. Osgood expressed reservation about the merger stating there was not enough information.

Ms. Scott indicated it isn't listed as two separate parcels, but the metes and bounds are described.

Mr. Osgood said he would like to see a deed or a survey.

Ms. Scott indicated that a survey was available and the deeds were on file.

Chairman Claire indicated she would feel more comfortable about the merger if it passed legal review.

Mr. Osgood repeated his desire for more information before final approval.

Mr. McElroy indicated there was no action the planning board could take.

Ms. Scott said it does not violate the town's zoning; it is in common ownership; it is contiguous and can never be separated once the merger is recorded.

Chairman Claire indicated her concern over the finality of the merger if there was not a deed or legal review.

Mr. Parker indicated that would be the issue of the landowner, not the planning board.

Ms. Scott added that the surveyor would sign and stamp the plans he reviews.

Chairman Claire said she was interested in the chain of title of the property and the right of way.

Ms. Scott indicated she would retrieve the plans for the board's perusal. She indicated that ATFP was under the belief they owned Lots 350 and 351.

After review, Ms. McCourt said the plans were stamped by a surveyor.

Mr. McElroy said that the lot clearly exists, it's a question of who owns it.

Ms. Scott indicated that these were the "existing conditions" plan.

Chairman Claire repeated that the loop had been closed, but chain of title is different.

Ms. McCourt indicated that if the surveyor did their research, that would close the loop. That is indicated by the surveyor's stamp.

Mr. Miner added that before the surveyor did anything on the lot, they would have done deed research back to the original lots, then would proceed with field work.

Ms. Scott added that the representative from ATFP had been logging the lot for the last six months in anticipation of the subdivision. If someone else owned it, something would have been said while the logging was ongoing.

Mr. Osgood indicated that the surveyor doesn't indicate who owns Lot 350, it just indicates they have been merged. Ownership is indicated for Lot 349-H and 351.

Chairman Claire indicated that Johnstone Realty Trust was the previous owner according to the deed, the book and volume. It was purchased in 1996.

Mr. McElroy indicated that ATFP is attesting to ownership by their signature.

Ms. Scott repeated that ATFP has always had one tax card. It was assumed by ATFP all along that they owned it. The Town signed and issued an intent to cut.

Mr. Osgood wondered if the document were of importance, why it wasn't notarized.

Chairman Claire said she didn't find that important, but what was important was that a surveyor put the plan together and closed the loop on it.

Chairman Claire asked Ms. Scott if a vote was required on the proposed merger?

Ms. Scott said a signature was required, but not a vote.

After discussion by the board, the proposed Voluntary Merger of Map 1 Lots 350 and 351 was signed.

Comprehensive Shoreland Protection Act Workshop Update.

Chairman Claire asked for a report from Mr. Leon Parker regarding the workshop and attendant information.

Mr. Parker attended the meeting on a very blustery August 11 day at the church landing. A representative from DES presented his material by PowerPoint on water contamination. Mr. Parker pointed out that DES has a 30-day deadline for approval of applications. Application quotas were small and DES was running at about a 21-day average approval.

Mr. Parker's next session was informative on how to navigate the permitting system. A point of interest is that people may be under the impression that a roadway may somehow exempt the homeowner from compliance with the permitting system, which is incorrect; they are still applicable. Mr. Parker indicated there was some confusion between wetlands permitting and the shoreline protection permitting. If you have a scenario where both permits are required, only one lump sum payment is expected.

During the outdoor session a demonstration was set up with a 50x50 foot roped off area. Trees are measured and given corresponding points. Once a total of 50 points is reached, you can cut without a permit anything taller than 3 ½ feet. Dead trees can be cut without a permit. It was advised by the presenter that taking photographs before cutting may be beneficial. Mr. Parker showed the board a hand-out he was given that would be helpful in measuring the trees.

Mr. Parker added that anything under three and one half feet is to be left standing. There were recommendations of particular shrubbery to be added or retained. High-bush blueberry was one of the recommendations of a highly-desirable bush to retain or plant, although the bushes would have to be periodically weeded to keep the undergrowth from overtaking the bushes. Suggestions were given at the presentation about different wildlife plantings, to include dogwood, winter holly and high-bush blueberry. The ideal waterfront property would be broken down into "outdoor rooms" of shrubbery interspersed with lawn.

Mr. Parker further stated that a demonstration was given on different pervious pavements. He thought this information may be helpful for future development decisions the board may be

making. Pike was one of the demonstrators and when pressed about durability, her response was: “We’ll tell you in 20 years”. Pike’s studies are derived from a testing area subjected to heavy truck traffic.

Ms. McCourt added that UNH has done many studies on pervious pavement and may be a good resource for information.

Mr. Parker said that the key to installation of any pervious surface was the preparation below it.

Mr. Parker said another gentleman from a cement company had a display set up to show water running through the surface. One component of the upkeep involved periodic vacuuming of the surface.

The third representative displayed solid concrete blocks with ridges that would be set to create spaces between them. Water would run through the blocks to the prepared base below. Mr. Parker questioned how this surface would hold up to winter plowing.

In conclusion, Mr. Parker found the surface information most informative.

Chairman Claire indicated that enforcement may become an issue of the Shoreland Protection Act, especially on the bigger lakes in New Hampshire.

Mr. Parker said that this entity was self-funded receiving their funds from application fees.

Ms. McCourt indicated that she had recent experience in working with a 50-foot buffer in creating a retaining wall located near a lake. She was amazed at how few mature trees were left standing in order to meet applicable standards at a site. Ms. McCourt added that if trees are cut, you cannot remove the stumps but they can be cut below grade.

Mr. Parker invited anyone working with the Act to read the regulations thoroughly. The information was also available online.

Ms. Scott said the DES website would be a good resource for anyone looking for information.

Mr. Osgood inquired who was the vendor displaying the porous concrete.

Mr. Parker said it was a New Hampshire firm by the name of Concrete Deliverers.

Ms. McCourt indicated that UNH had used a local concrete company to install their porous pavement. They have not vacuumed their pavement for over five years and it worked well.

Board Member Committee Updates.

1) Board of Selectmen

Mr. Parker indicated the Selectmen had approved the Registry of Deeds fee.

2) Conservation Commission

Ms. Stamps reported that the Conservation Commission (CC) was looking into sponsoring periodic seminars relative to cyanobacteria which would be open to the public to attend. In addition, there may be particular issues that are of interest which would also be open to the public. The CC was also interested in sponsoring seminars relative to the Shoreland Protection Act and also issues relative to open space.

Mr. Parker inquired if funds were available through the CC.

Ms. Stamps said that money from the land use change tax flows into the CC. She was unsure of an exact dollar amount.

Chairman Claire added that to her knowledge, it was somewhere in the vicinity of \$300,000. Since the recent acquisition of riverfront property, the total may be somewhere around 150,000 to 170,000. She added that what the funds can be used for is up for legal debate.

Ms. Scott added that she has used funds in the past for legal fees incurred in agreement with the landowner.

Ms. Stamps added that a legal opinion was provided by the Local Government Center relative to the use of the funds if it was to be held by someone else.

Ms. Scott said in her past experience, as long as the town was going to be the easement holder, conservation commissions would be considered the back up.

Ms. Stamps said that would make sense because the legal issue is if the town is not holding the easement, what's in it for the town.

Mr. Parker said he was inquiring because there is a piece of land that may be on the market.

Chairman Claire said that to spend funds for that would be appropriate.

Ms. Stamps said that signs had been put up at the river front location and cars had been parked there.

3) Open Space Subcommittee

Ms. Stamps added that the Open Space Subcommittee is going to take the natural resource inventory and inventory of prioritized land and begin to target property owners, approaching them directly to be sure they understand conservation easements.

4) Water Resources Subcommittee

Mr. Taylor was unable to attend the recent meeting, but did review the minutes. The committee's work is progressing.

Ms. Scott asked if there is a water management plan, who holds hearings on it.

Mr. Taylor said it was presented before the Selectmen but no action was taken on it.

Ms. Scott indicated that if a plan was in place, it needed to be adopted. If you have an initial plan, it can be used to obtain grants. There was a question as to which board would grant approval; selectmen, conservation.

Ms. Stamps indicated that a portion of a water plan is just the inventory of water bodies and descriptions. What's the management part?

Mr. Taylor said management is of both surface and underground water.

Mr. Taylor went on to say that he did review the portion dealing with Cogswell water and the sewer plant as that discharge goes into the river and would be considered surface water. Underground would include inspection and monitoring of storage tanks.

Ms. McCourt stated that the inventory would be a factual tool in placement of things such as a gas station. You would have knowledge where the community water bodies are.

5) Road Management Committee

Mr. Guzouskas referenced the spreadsheet provided to the board which, when finished, will be a complete inventory of the town roads. This is a project that volunteer students from UNH have been working on through the summer. At this juncture, it represents approximately 45 percent of the roads inventoried.

Mr. Guzouskas indicated this document will become a useful tool for the town road agent and the selectmen. The data it contains will enable the town to plan for its road system in an effective manner over time and also record what roads are in existence at the present time. This information will also be a valuable tool for the CIP Committee in its work.

The inventory contains data that the Fire Department gathered post 9/11; data Reggie Cleveland created during his tenure with the Highway Department; and Central New Hampshire Regional Planning Commission.

After additional review of the spreadsheet by the Road Management Committee, it will be presented to the selectmen for their approval.

Ms. Stamps asked how this information is different than the multi-year prioritization for road improvements?

Mr. Guzouskas said at the present time there is an arrangement in which the road agent presents his suggestions to the Selectmen. The suggestions are based on a best guess at that point in time. The suggestions are subject to change at any time.

Mr. Parker added there was a dramatic change on a recent highway project due to the rising cost of asphalt.

Mr. McElroy raised the subject of road standards for gravel roads.

In response to that, Ms. McCourt cited her experience of inspecting grader operators and inspecting gravel roads.

Mr. McElroy stated the issues have centered around the cost of the maintenance of gravel roads versus asphalt roads. The cost of a properly constructed and maintained gravel road should not differ greatly from that of a paved road.

Chairman Claire stated that the town was experiencing a higher failure rate due to the materials used during construction.

Ms. Scott indicated that this topic was an issue she would bring up for further discussion at a later time.

Mr. McElroy suggested that the gravel road standard could be incorporated into the subdivision regulations with a public hearing and a vote of the Board. If the town engineers and the highway department fail to accept a newly constructed road as a town road, then it's of no use. It was stated that the selectmen have to adopt the gravel roads into the town road standard simultaneously with the planning board accepting the standard into a subdivision.

Mr. Osgood said in the past Chairman Watman took strong issue with who controls the road standards. He also suggested that it was a matter that should be dealt with in concert with the selectmen.

Mr. Parker indicated that town road maintenance was a topic of spirited discussion, but the town road standards, as adopted by the selectmen, are contained in a binder.

It was indicated by several members of the board that this is a topic they wished to move forward on. Mr. Guzouskas said there are a number of parties who would be important in this conversation: the road agent, the planning board, the selectmen, the town engineer. Mr. Guzouskas' thought was that if it was to be workable long-term, then a process should be created that all parties were able to abide by.

Ms. Scott indicated that included in the subdivision regulations there are recommendations for gravel road standards.

Mr. Parker referenced a CIP meeting some years ago where the road agent pointed out that at one time he had been encouraged to pave all town roads.

Mr. Osgood volunteered to begin gathering information relative to gravel road standards to include materials, infrastructure and training. It was suggested this information be available for the September 15, 2008 meeting.

Chairman Claire said it may be a good idea to have the road management committee involved.

Mr. Parker commented that road standards can be included in the subdivision regulations. A management plan may be totally inappropriate since once the roads are built, maintenance specifications need to be followed.

Ms. Scott added that the planning board has no authority to include in subdivision regulations how a road is to be maintained, that is a town issue. Applicable standards would have to be followed, i.e., the width and depth of the road.

Ms. McCourt reminded Mr. Osgood that the management plan would have to be submitted to the Road Management Committee also for acceptance.

6) Central NH Regional Planning Commission

Mr. McElroy described funding for the Currier & Ives Scenic Byway. This route includes portions of 127 through Webster, Hopkinton and a small chunk in Henniker to end at the Franklin Pierce Homestead. This byway may include signage and increased tourist traffic.

Mr. McElroy also reported that the Planning Commission was attempting to gather a consortium of 20 towns in the district for the purchase of salt. State support was unavailable last year for this purchase. There is an upcoming meeting slated for September.

Mr. Osgood indicated that the meeting went well with George Campbell, the DOT commissioner. Mr. Campbell is a strong advocate of rail transportation.

7) Transportation Advisory Committee

Mr. Osgood stated although he doesn't have a recent agenda or minutes to share, he does have material from past meetings he has attended.

Mr. McElroy added that one of the functions of that particular committee is to prioritize requests for transportation work. Unfortunately the funds are limited and bridges and/or dams seem to be of the highest priority.

2009 Town Meeting Draft Warrant Articles – Zoning Ordinance Amendments

1. Review and Discussion of HB 1260 and if there is a need to remove or modify GMO

Ms. Scott reported the first amendment related to the Growth Management Ordinance (GMO). She indicated that there is a sunset date on the GMO. An item of interest is whether or not the study performed by the planning board shows there is enough evidence that the GMO is needed to begin with.

Mr. McElroy indicated that the sunset period would expire in 2010 and there would be a grace period in place. His opinion is to continue to renew. If the town decides they would like to continue it, then work would have to be done as it is based on things such as available water resources, sewer resources and road resources.

Ms. Scott was of the opinion that as long as the town continued with the annual assessment, the situation would be fine. There is language contained in the zoning ordinance that should residents raise a challenge to the town, they may apply for a variance. The GMO was designed to be temporary. That's why a GMO is done in combination with a master plan and a CIP. If infrastructure deficits exist, the GMO and CIP should identify those and move forward. Ms.

Scott would not opine whether the ordinance is legal or would survive a challenge, but it does sunset in 2010. Ms. Scott indicated this matter did not require the attention of the board, it was just given as an update.

2. Review and Discussion of HB 310 and the changes required to Zoning Ordinance

Ms. Scott recommended relative to bringing this information to Town Meeting, maybe adding verbiage relating to personal wind turbines and that they do not follow the height limit.

Mr. Parker suggested citing the specific RSAs relative to the changes.

Ms. Scott said that the wording should be user friendly for the average layperson.

Mr. McElroy said there was a clause relative to amateur radio antennae requiring a height of 70 feet. Mr. McElroy agreed with the suggestion of citing the RSAs.

Ms. Scott offered to draft two options for the planning board.

Chairman Claire said the HB language was well done and straightforward and it should be referenced.

Mr. McElroy referenced a height of 120 feet.

Mr. Parker added that the placement of the wind turbines and specific locations may dictate the height required.

Ms. Stamps referenced an item in the HB relative to noise level limits.

Mr. McElroy said there were no limits set by the town.

Ms. Scott said she would draft options for the September work session so it may potentially be added for discussion at Town Meeting.

3. Review and discussion of SB 342 and if there is a need for any Zoning amendments

Ms. Scott moved on to SB 342 relative to workforce housing. Ms. Scott asked Mr. McElroy if he was in possession of the housing needs assessment.

Mr. McElroy indicated work was being done on it.

Ms. Scott referenced the regional housing assessment which determines whether towns provide a fair share of workforce housing. Ms. Scott suggested referring this topic to town counsel for review to determine if the zoning meets the standards of the legislation.

Mr. Osgood stated past history indicated that Henniker far exceeded its fair share.

Ms. Scott said there was a challenge presently against the town and this legislation clarifies the rules.

Ms. Stamps and Ms. McCourt discussed different interpretations of the term “affordable housing” and “permitted use”.

Chairman Claire agreed with Ms. Scott’s request for review by town counsel to include recommendations, if any.

Ms. Scott said town counsel may already have a sense of where the town may stand on the workforce housing issue.

Mr. Parker cautioned against putting it out for a vote without a very careful description.

Ms. Scott indicated she would specifically ask town counsel if it was something ripe for consideration at town meeting.

Miscellaneous

Ms. Scott referenced a *Concord Monitor* article relative to wood boilers. She indicated that no action needed to be taken by the planning board, it would be a building permit processes handled by the building inspector, Henniker Fire Department and the Town Administrator.

Ms. Scott moved on to the junkyard memo. Ms. Scott referenced recommendations numbered 1 and 2 as they relate to the planning board. She asked if the board would like a draft to be prepared regarding these numbered paragraphs.

Chairman Claire suggested revision to be consistent with existing RSAs.

Ms. Scott stated that state law is presently more restrictive than the town ordinance.

Chairman Claire suggested updating the recommendations to bring them in compliance with state law. She asked for suggestions or comments from board members.

Ms. Stamps agreed it made logical sense.

Ms. Scott added that she didn’t feel the junkyard ordinance would be that controversial. It is not a desirable use and the current junkyards are deemed illegal. Ms. Scott went on to say two options may be writing out the definition with the suggested verbiage or making direct reference to a specific RSA.

Mr. Parker suggested it may be simpler to reference the RSA because then if it changes, the town won’t have to change the zoning ordinance.

Ms. Scott said that she often has to assist town residents with ordinance definitions. Any verbiage that would simplify the process and make things more user-friendly would be advantageous.

Ms. McCourt had a suggestion regarding changes brought to the town voters regarding wording of regulations. She suggested if terminology was used to suggest that the changes are to make processes more compliant rather than taking away residents' rights, it may be better received.

Ms. Scott said that the selectmen are responsible to actively license junkyard facilities in town presently.

Mr. Guzouskas said that there may be many residents in town who did not realize that their property and its contents fall within the legal definition of a "junkyard".

Mr. Parker reminded the board that each individual case of what might be considered a junkyard needs to be handled with finesse.

Chairman Claire said that the definition of what constitutes a junkyard could be considered by some to be antiquated pieces of equipment that may be integral to someone's farming operation.

Ms. Scott questioned the two selectmen present if they thought the planning board should make the suggested changes to reflect what it is they're trying to accomplish.

Mr. Parker deferred to the chairman of the selectmen.

Ms. Scott concluded the conversation with her suggestion of drafting proposed language.

Ms. Scott next inquired of the board if anyone had an interest in attending the Local Government Center Law Lecture, she would need to know this information by next Wednesday [September 3, 2008].

Ms. Scott next addressed the Board Member Binder Update.

Mr. Taylor requested that the inserts the board receives be dated.

Ms. Scott went on to address a request by a landowner for a site walk in case #2008-008. After board discussion, the members were unable to reach a consensus on a specific available date.

Mr. Osgood made a MOTION to adjourn the work session. Mr. Guzouskas SECONDED the motion.

Work session of the planning board adjourned at approximately 9:25 p.m.

Respectfully submitted by Recording Clerk Michelle A. McGirr