

Henniker Planning Board

Approved Minutes

January 9, 2008

Members Present: Jim McElroy, Chairman; Kristin Claire, Vice-Chair; Terry Stamps; Ron Taylor, Selectman ex-officio; Gary Guzouskas; Edward Miner, Alternate; Scott Osgood arrived at 7:45 pm.

Others Present: Laura Scott, Town Planning Consultant; Jennifer Astholz, recording secretary; Bob Stamps; Rik Humboldt; Rick Patenaude; Peter Flynn, Town Administrator; Martha Sunderland; Caleb Dobbins; Rodney Patenaude; Jason Michie; Gene Brown; Thomas Patenaude; Cordell Johnston; Holly Green; Denis McComish

Chairman McElroy called the meeting to order at 6:30 pm. He announced that Alternate Board member Edward Miner would be voting in the absence of Board member Kellie Dyjak.

The minutes of the December 12, 2007 Planning Board meeting were reviewed and corrected. These minutes were set aside until Mr. Osgood was present to clarify one comment.

The Board granted permission for Rik Humboldt to record the meeting.

The minutes of the December 17, 2007 Planning Board meeting were reviewed and corrected. Kristin Claire **moved** to approve the minutes as corrected; Terry Stamps **seconded**. The motion **passed unanimously**.

7:00 PM: 2008 Town Meeting Public Hearings

Chairman McElroy explained the process that would be followed for the public hearings. It was noted that copies of all documents were available for the public. Ms. Scott, Town Planning Consultant, will make a presentation. The sponsor will make comments. The Board will have discussion. The public hearing will be opened in two phases: 1) to ask questions and gather additional information; 2) to express public opinions. Chairman McElroy reminded all present that discussion is to be kept to the zoning amendments, and personal attacks will not be tolerated.

1. Institutional

To delete references to "Institutional" uses in Article II Definitions, Article V Village Proper (RV) District, Article VI Residential Neighborhood (RN) District, Article VII Rural Residential (RR) District, and Article VIII Commercial District Regulations, sections 133-29, 133-30, and 133-31 and 133-32.

Ms. Scott stated that she and Mr. Guzouskas reviewed the document and made these changes to eliminate unnecessary repetition. There was no discussion by the Board. Chairman McElroy opened the public hearing at 7:05 pm. As there were no comments from the public, the hearing was closed.

Terry Stamps, Board member, **moved** to forward the proposed changes regarding Institutional definitions to the Town warrant. Kristin Claire **seconded** the motion. Motion **passed, 6-0**.

2. Excavations

Add language listing the authority, the regulator, and regulations for Excavations into Article IV Section 133-14. Delete the provision that allows by Special Exception Excavation in the Rural Residential District (Article VII Section 133-29). Modify Article VIII Section 133-29, 133-30, and 133-31 to only allow Excavations by Special Exception in the Heavy Commercial, Medium Commercial, and Commercial Recreational Districts.

Laura Scott explained the reason for the proposed changes. Article VII, Sections 133-29, -30, -31 would allow excavation by Special Exception.

Ms. Stamps explained that the Planning Board re-evaluated all permitted uses and uses allowed by special exception. The definition of excavation was looked at as the definition is “taking of earth for commercial uses”. The Board reviewed the State RSA’s, the Town’s Master Plan and current zoning to determine those areas which make sense for the future use for commercial development. Excavation use is the most intensive use of land in Town and is in conflict with any residential zoning.

The public was invited to take a closer look at the provided maps. Ms. Stamps stated that the Planning Board is responsible for maintaining a balance between protecting natural resources and increasing development. Several resources were cited, including the Natural Resource maps generated by the Conservation Commission, the Wildlife Action Map produced by the NH Fish & Game Department and the Merrimack County Soil Survey map.

Board Discussion: The Board discussed the State Highways (Rte. 202/9, Rte. 114 & Rush Rd.) as the proposed change would impact the RR district along these roads. The current proposal would allow excavations by special exception in the CH, CM & CR districts.

Chairman McElroy opened the public hearing at 7:27 pm. Laura Scott clarified that the maps are for information only and are not part of the zoning change. Chairman McElroy declared a 10-minute recess for the public to review the maps. The hearing was called back to order at 7:39 pm and was opened for questions from the public.

Denis McComish, resident, asked if there have been any problems or large excavation activity that warrants this action. Chairman McElroy explained that all uses are being

reviewed, in general, not as a response to any problems. As the Town population increases and more pressure occurs on the land, permitted uses may have to change to accommodate growth. Chairman McElroy stated that excavation businesses are important to the economy and need to be allowed, however, it may be best to have the ZBA involved to make sure that impact is beneficial to the entire Town.

Ms. Stamps stated that the proposed amendment allows for a procedure to allow the public to hear what is going on in Town. Land is limited and excavation is the most intensive use of the land.

Caleb Dobbins, resident, asked for clarification of the current rules and questioned the necessity of another layer of restriction. He also asked what other uses are only allowed in a district by special exception. The Board answered that home-based Bed & Breakfasts, kennels, sexually-oriented businesses and other uses are restricted in this manner.

(Scott Osgood, Board member, arrived at 7:45 pm.)

Rik Humboldt stated that this amendment allows excavation in all commercial zones by special exception except in the Rural Residential district.

Denis McComish stated that he read in the Villager that people affected by a proposed change to the Educational District were personally notified and wondered why this was not done for this item. He stated that notices are hard to find in the newspaper, and it would be a nice courtesy for the Board to extend to residents who may be affected by significant changes.

Kristin Claire stated that one reason the Board chose to notice the residents affected by the proposal to the ED district was that there was the possibility of actually moving boundary lines. Ms. Stamps also stated that those property owners were fairly easy to identify. The Board agreed that more public notification and participation is desired, and any ideas would be considered. Denis McComish suggested sending notices of upcoming discussions in the tax bills. Chairman McElroy stated that the Town website is used and notices are posted in public places; direct mailings are expensive.

Caleb Dobbins stated that the value of the excavation pits to the economy must be considered. He stated that there is not a choice of where sand and gravel are deposited in the earth, but people choose where to build houses. Allowing excavation in the RR district by special exception already allows the activity to be reviewed on an individual case basis and does not require additional restriction.

Chairman McElroy asked if it was known if there are any significant economic deposits along these proposed areas that would be excluded by this amendment. Leo Aucoin, resident, stated that sand/gravel runs can be found in unexpected places. He stated that bedrock is now also commonly mined, and one cannot limit the ability to blast and crush. The price of petroleum to get gravel from another town is staggering. He stated that the

amount of gravel that was used to repair damage caused by last year's floods was astonishing and availability to sources must remain accessible. He stated that the special exception process works well and those involved do not see the need for additional restrictions.

Martha Sunderland, resident, asked if quarrying falls under the same regulations; the proposed amendment covers that aspect as well.

At 8:02 pm, Chairman McElroy opened the public hearing for the public to express their opinions.

Caleb Dobbins stated that sand/gravel is a valuable natural resource, and when it is needed, it is really needed.

Martha Sunderland stated that this proposal is worthy to go before the Town for vote. She stated that the Town indicated their desire for the RR district to maintain its rural character. There is increased developmental pressure and allowing excavation by right is not compatible. There are provisions to allow this industrial use of land in more appropriate areas.

Rick Patenaude, resident, stated that he is against this proposed amendment and rejects the notion that Town government needs any more jurisdiction. He wanted to remind everyone that we live in a city where the individual began as being protected by the government. As more and more restrictions are imposed, people that own land are affected, radically changing the financial picture. He stated that it is wrong to use government to control things that it doesn't own, and gravel operations are more than adequately controlled. He is asking that this proposal be defeated.

Denis McComish stated that they hear a lot about the Master Plan, but he would like to hear more about the Constitution and Bill of Rights and the individual.

Chairman McElroy stated that the Board is charged with protecting natural resources and making informed judgment when regulating uses. Increasingly, more court cases are citing Master Plans as evidence.

Bob Stamps, resident, stated that he believes the excavation operations positively impact the Town; however, they can also have a negative impact on the character of a town and the quality of life in the RR district. He stated that people in Town should have the right to vote on this item.

Rick Patenaude stated that it appears that there are more people in attendance who are against this change. Land is valuable because people want to do what they want with their land. This is not the direction in which this town should go as it sounds like other people are deciding the fate of people's land.

Tim McComish stated that excavation pits are described as being “unsightly.” He stated that there is a reclamation process imposed which can leave the land more desirable than its original condition.

There was discussion about this only applying to new pits, not existing ones. The public hearing was closed at 8:29 pm.

For discussion purposes, Gary Guzouskas **moved** to amend the proposed ordinance by removing Article VII and Article VIII. Scott Osgood **seconded** the motion.

Mr. Guzouskas stated that the landowners present have explained their stewardship of their land. The system appears to be working, and he doesn’t think there is sufficient justification for changing the process.

Ms. Claire stated that the proposed amendment does not really affect those that are speaking against the amendment since they have existing pits which are grandfathered.

Mr. Guzouskas stated that this moves from an ability to do excavation to adding another process. He believes that there are other landowners who may have interest in these areas.

Mr. Osgood stated that he appreciated the comments that were shared. The excavation pits are economically important to the Town, and the Board does not have a good sense as to how this will really affect the industry.

There was further discussion about the permitting process and current laws.

Ms. Stamps stated that this was designed to look at where the activity should occur in Town to plan for further development.

Ms. Scott suggested rewording the motion for easier reading. These minutes reflect that Mr. Guzouskas **moved** to advance Article IV only to Town Meeting. Scott Osgood, second, **agreed** with the change. Vote was taken: **5 In Favor** (Mr. Osgood, Mr. McElroy, Mr. Taylor, Mr. Guzouskas, Mr. Miner; **2 Opposed** (Ms. Stamps, Ms. Claire)

3. Article XIII Administration.

Amend Section 133-51 to allow the Board of Selectmen to choose a designee to act on their behalf; add section 133-51.1 to have the Board of Selectmen enforce and adopt the State Building Code (RSA 155-A); amend 133-52 to allow the Board of Selectmen to choose a designee to act on their behalf, to adopt fees, and to delete language about zoning enforcement; delete Sections 133-53 Issuance of Permit and Section 133-55 Permit Not Required for Certain Construction.

Ms. Scott explained that this is the first public hearing on the proposed changes. She stated that section 133-51.1 allows the Board of Selectmen to enforce the State building

code. This would be adopted provisionally in response to the Town adopting the State building code.

Peter Flynn, Town Administrator, read from a letter stating that the Board of Selectmen has designated the Planning Board to pursue this. The Town has yet to vote on whether or not to enforce the State building code.

There was a great deal of discussion about the ability to conduct voluntary building inspections vs. mandating enforcement to the State building code.

Mr. Osgood stated that the builder has the duty to call the State Fire Marshall if the Town has not accepted the State building code. This is dependent on whether or not the Town agrees to enforce the State building code.

Cordell Johnston, resident and member of the Board of Selectmen, stated that the 1- or 2-family exception no longer applies.

The public hearing was opened for questions at 8:55 pm.

Leo Aucoin stated that if this is adopted by the Town, it will require a full-time code enforcement officer, and strongly stated his disagreement with this direction for the Town.

Cordell Johnston asked what the perceived need for the Town to enforce the State building code is. Chairman McElroy stated that there have been increased occurrences throughout the State of shoddy building practices; financial institutions are requiring more to grant mortgages and the Town is responsible for the public safety of its residents.

There was more discussion about the current inspection process.

Cordell Johnston suggested that the Town is still entitled to know what is being constructed. It was suggested that “building permit” is tied to the State building code, so the name could be changed to a “Certificate of Compliance,” for example.

Tim McComish stated that shoddy workmanship is done under the cover of not having a building permit. No matter how many laws there are, those people will continue to operate that way.

Mr. Johnston expressed his opinion that even if the Town does not adopt the State building code, residents still could opt for a voluntary building permit. This would be a service provided to the community, not an enforcement issue. Mr. Johnston stated that he does not have a problem with the land use component but does have a problem with the Town getting involved in the construction of his personal home. He stated that there are understandable safety issues, but does not think that the Town needs to be concerned about the extensive details in the State building code. He expressed that it is a tragedy that the State adopted it as it goes far beyond reasonable safety measures.

Ms. Claire stated that her house, c.1770, could not follow the code without significant impact to the historical structure and integrity of the home.

There was more discussion about the voluntary inspection process, and the legality of the \$5,000 exemption.

Mr. Osgood stated that building a house is more than a simple carpentry project. Other people will be affected. The building code is meant to protect all people. He stated his opinion that it would be a disservice if the Town did not accept the State building code. He stated that most people think there is a standard, and without this, builders don't have responsibility to meet any standards.

Martha Sunderland stated that 2-family homes fall under this exception. She stated that these are rental properties and feels that these should at least be constructed to a standard code.

Mr. Johnston stated that the buyer of any home should be responsible for doing "due diligence." He stated that any construction problems he created when building his home should be his own responsibility, not the Town's.

Mr. Aucoin stated that he agrees that a home built without a buyer to oversee the work should be done to a standard code as this is where the shoddy work will be done. He does not think the Town needs to take on more code enforcement.

Ron Taylor **moved** to accept the proposed ordinance as presented with a change to section 133-51.1 with language "as adopted by State of NH" inserted for clarity. Scott Osgood **seconded** the motion.

Discussion: Mr. Miner stated that he has 30 years experience in engineering and codes, and he has seen some really bad work. He stated that this should be advanced to Town meeting.

Vote to advance to Town meeting: **In favor: 6** (Mr. McElroy, Mr. Guzouskas, Mr. Miner, Ms. Stamps, Mr. Osgood, Mr. Taylor); **Opposed: 1** (Ms. Claire)

Laura Scott asked the Board to consider splitting the questions on the ballot into 2 parts: 1) administrative (section 133-51, 133-52, 133-53); 2) building permits (section 133-51.1 & 133.55). Mr. Osgood stated that this is not a good idea; Mr. Flynn stated that Town Counsel suggested the wording. Ron Taylor **moved** to split the ballot questions into two parts as described. Mr. Guzouskas **seconded**. Motion **passed, 6-0**. (Mr. Osgood did not vote.)

4. Manufactured Housing and Manufactured Housing Park

Article II Definitions, to modify the definition of "Manufactured Housing Park" and to delete "Manufactured Housing Subdivision". Delete Section 133-10 from Article IV General Provisions. Add the provision for "Manufactured Housing Park" to be allowed by Special Exception in the Residential Neighborhood District (Article VI Section 133-24). Delete provision for "Manufactured Housing Park" from the Rural Residential

District (Article VII Section 133-26). Delete provisions for “Manufactured Housing” and “Manufactured Housing Park” from the Heavy Commercial and Medium Commercial District (Article VIII Section 133-29 and 133-30). Delete the following section from Article XX Manufactured Housing Parks: Section 133-82 Permitted Locations, Section 133-84 Park Management, Section 133-85 Responsibilities of Park Occupant, Section 133-86 Emergency Services Building, Section 133-87 Size of Unit Lots Within Park, Section 133-88 Setbacks and Clearances, Section 133-90 Park Lighting, Section 133-91 Electrical Systems, Section 133-94 Refuse Disposal, Section 133-95 Fire Protection, Section 133-96 Unregistered Motor Vehicles, Section 133-97 Permit Procedure, and Section 133-98 Public Hearing. Modify Article XX Manufactured Housing Parks to clarify that all internal park roads are to be built to Town Subdivision Regulations and that they are to remain private roads; that 50% of the open space is to be free of wetlands and slopes; to increase the buffer strip from 10 to 15 feet; to require 70 feet of frontage for each manufactured home; to require a 25 foot setback for each manufactured home from the roads and buffer strips; to require 40 foot between each manufactured home, and to require that a manufactured housing park must consist of at least 3 manufactured homes.

It was the consensus of the Board to not read the description regarding Manufactured Housing. Ms. Scott gave a description of the changes to the Manufactured Housing Parks and Subdivisions. Many changes proposed are to comply with State Law. She stated that nothing makes the requirements more difficult but clarifies the requirements. Language about campgrounds has been removed as campgrounds are not an allowed use. Legal counsel has reviewed this.

There was discussion about the economic feasibility of manufacture housing parks.

The public hearing was opened at 10:10 pm. Hearing no comments, the hearing was closed.

Ron Taylor **moved** to bring the proposed amendment forward to Town meeting. Terry Stamps **seconded** the motion, and it **passed, 7-0**.

2008 Town Meeting Proposed Zoning Amendments

Article II Definitions: Fences

This is not a public hearing but is brought up for discussion purposes. The Board has decided to review changing the definition of fences in order to allow a fence to be erected on a property line. Public safety issues and the process it requires was discussed. Mr. Taylor explained that a resident wanting to erect a fence must go to the Fire Dept. for approval on safety aspects.

Ms. Scott stated that a public hearing can be held in order to take the amendment to Town meeting; however, there will not be time to make any changes to it.

Ms. Claire **moved** to forward Article II Definitions: Fences to public hearing on January 23, 2008. Ms. Stamps **seconded** the motion. Motion **passed, 6-0**. (Mr. Osgood did not vote.)

2008 Growth Management Ordinance – Review Building Permit Figures

Ms. Scott reviewed the process for calculating building permits. She stated that court cases determine that Growth Management Ordinances may not limit the Town's fair share of growth compared to surrounding communities.

Ms. Claire **moved** to accept the calculations as presented for the number of 2008 building permits. Mr. Guzouskas **seconded** the motion. Motion **passed 7-0**.

Clarification from Mr. Osgood was obtained, and then Ms. Claire **moved** to accept the minutes of the December 12, 2007 meeting as corrected. Mr. Taylor **seconded** the motion, and it **passed unanimously**.

Mr. Taylor **moved** to adjourn; Mr. Guzouskas **seconded**.

Ms. Stamps requested that the Board discuss the public hearing process. There was discussion about when content of the public hearing may alter the Board's direction in bringing the proposed amendments to the general public for vote at Town meeting. It was noted that early dialogue with residents and property owners is key to better understanding the issues.

Vote to adjourn at 10:55 pm passed, 7-0.

Respectfully submitted,

Jennifer Astholz
Recording secretary