

Henniker Planning Board Wednesday March 11, 2009

Draft Minutes

Call to Order/Attendance

Members Present: Kristin Claire, Chairwoman; Gary Guzouskas, Vice-Chairman; Terry Stamps; Jim McElroy; Scott Osgood; Kellie Dyjak; Ed Miner

Ron Tayler, Selectman ex-officio and Leon Parker, Alternate Selectman ex-officio arrived at 8:50 pm.

Others Present: Laura Scott, Town Planning Consultant; Mike Vignale, Town Engineer; Jennifer McCourt; Rick Patenaude; Tom Patenaude; Jeffrey Roach; Jennifer Astholz, Recording Secretary

Public Hearing (Continued)

Case 2008-011 Excavation Application

Map 1 99 located on NH 114 (70 Bradford Road) in the Medium Commercial (CM) Zoning District. The applicant, Jennifer McCourt, on behalf of Mink Hills Land, LLC, is proposing a commercial excavation operation on Lot 99 with access through Lot 44 to NH 114.

Laura Scott distributed to the Board members, Town Engineer and the applicant, a memo dated 3/11/09 which was received from Romeo Dubreuil, the new Town Code Enforcement Officer. Ms. Scott also stated that the wetlands permit had been issued.

Chairwoman Claire asked the applicant to give an update summary. Jennifer McCourt stated that there were extensive emails between the applicant and the Town Engineer which resulted in the revised excavation plans. She stated that they have worked out a solution to phasing the project in order to decrease costs and make the project more affordable. She stated that a goal was create a plan where the Town would not be responsible for blasting ledge if that became necessary for reclamation. Ms. McCourt stated that the applicant did receive approval for the wetlands crossing. She stated that specific information concerning erosion control measures and diversion berms are outlined in her memo dated 2/27/09. She explained that there is work that needs to be done prior to actual excavation, such as removing boulders, stabilizing that part of the land that is not going to be part of the excavation and removing loam. She stated that they want to leave some overburden there for blasting purposes. She then showed the loam stockpile and the overburden stockpile on the plans. She also showed the restoration line and the 3' minimum that would need to be ledged so as not to be so arduous to restore. Ms. McCourt stated that the diversion ditch would be constructed before blasting begins.

Ms. McCourt stated that they would have to ask for additional bond money to go 100' in, and every time they want to increase the phase, they would have to add to the surety guaranty. She stated that there would be additional bonding until they do reclamation work. She stated that they would come back to the Planning Board to show the reclamation plan.

The plans are divided into 50' widths to make it easier to see. Ms. McCourt showed a sedimentation pond on one side. She stated that the base width is 50 feet and additional phases follow clearly defined areas. They can create 1:1 slope as long as they are in the ledge, but then would go to a 2:1 slope.

Ms. McCourt stated that the applicant does not have any problem with the increased bond estimates provided by the Town Engineer. She stated that their attorney would draft a legal agreement, if necessary.

Mike Vignale, Town Engineer, stated that it is his opinion that this revised plan will work. He stated that there was a great deal of communication with the applicant to come to a solution that would be workable for the applicant and the Town. He stated that the bond amount is still relatively small, and the operation would have to be actively monitored. He stated that as long as the pieces of land being excavated are adjoined, it seems like a reasonable plan. Mr. Vignale stated that the stockpiled material has to be considerably more with this plan than what had been discussed before.

Chairwoman Claire stated that the Town's history of monitoring excavation operations causes her to question who will be responsible for monitoring this project. She stated ongoing communication with the applicant will be necessary. Ms. McCourt stated that, according to the RSA's, the applicant has to come before the Board every two years.

Mr. Vignale stated that a significant difference between this excavation operation and other subdivision or site developments is that a full bond is in place in the other circumstances. He cautioned the Board to avoid getting "upside-down" on this project as a lot of things can happen in two years.

Jim McElroy stated that he would like to have a timeline associated with activity at the site. He stated that he does not know how long it typically takes to excavate a 50' area, but that information may be helpful in developing a monitoring process.

Gary Guzouskas asked the applicant if they operate year-round on this type of project. Tom Patenaude stated that he anticipates working 6-8 months of the year.

Ms. McCourt stated that the excavation business is based on need and is directly tied to the economy, so providing a timeline is arbitrary.

Kellie Dyjak suggested that a note be recorded that the applicant must come in when they begin work in the spring and again when they end work in the fall to show how much excavation had been done during that time period.

Ms. McCourt stated that it appeared that the Board was going from no enforcement of excavation pits to asking for more inspections during the year for their operation. She stated that the

Patenaude's have been in this business for many years, and they have never had to work in this fashion before.

Rick Patenaude stated that they have no way of anticipating the duration of the project.

Mr. Guzouskas summarized reasons for this discussion. He stated that there was a wide gap between the two differing perspectives of the applicant and the Town Engineer. He explained that he had asked the applicant and Town Engineer to work out some feasible arrangement that would be plausible for both sides. He then asked for input about the proposal from Mr. Miner and Mr. Osgood, the engineers on the Board.

Ed Miner stated that he never saw anything quite like this before, but stated that it looks like it is a reasonable plan. He asked the Town Engineer how frequently he would suggest inspections be done and by whom. Mr. Vignale stated that conducting inspections two times per year, as stated in the regulations, is probably a good starting point.

Terry Stamps asked if an inspection could be triggered once a certain amount of material is removed.

Ms. McCourt stated that there are three criteria which trigger inspections to be done: 1) moving into wetlands; 2) site specific reasons; 3) beginning excavation and timbering. She reminded the Board that the applicant has quite a bit of pre-excavation work to do, such as removing boulders and other work, during which time a working relationship and communication process can be developed.

Mr. McElroy asked to discuss how the phasing process will work. He asked if the applicant will initiate communication with the Planning Board when it is time to increase the bond.

Ms. McCourt asked if that could be done as an administrative item or be listed as a discussion item on the Board's agenda; she does not anticipate needing a new public hearing each time.

Laura Scott stated that the Code Enforcement Officer, Ron Dubreuil, stated in his memo that he does not feel comfortable inspecting this excavation project. She stated that the Town Engineer would probably be the best person to inspect the plans and the site. The Town Engineer could then write a letter to the Planning Board to keep communication open between all involved parties. The Planning Consultant can coordinate the various aspects of the inspection, but the Planning Board will have to assume some responsibility to follow up on this. She cautioned the Board against relying only on applicants to come back to the Board and supported the creation of a proactive process. Ms. Scott also stated that the Planning Consultant and Town Assessor can be part of the process and tie inspections to an April 1st date, for example.

Ms. Dyjak suggested that a position could be created on the Board to be in charge of "overseeing" excavating operations so that details can be reviewed in an orderly manner.

Mr. Vignale stated that any fees incurred for inspections would be paid for by the applicant.

Mr. Osgood stated that the Board asked Mr. Vignale and Ms. McCourt to come together to work out a bonding plan that would not bankrupt the applicant. They have done good work on their part to arrive at this point. There was obviously some compromise on both sides to arrive at this agreement. Mr. Osgood stated that the new Code Enforcement Officer might be overwhelmed with the responsibility of inspecting this site; however, it really just involves looking at lines and grades. He stated that, unfortunately, the CEO's job description does not cover overseeing excavations. Mr. Osgood suggested that the Town Administrator have his assistant create a log to trigger an inspection twice each year as this is really an administrative issue.

Ms. McCourt stated that it is her opinion that the April 1st trigger is a great idea to remind the Town Planner and Town Engineer of this project.

Mr. Osgood stated that the second inspection would occur at the end of the season which will most likely be on or about November 1st.

Ms. McCourt requested that the inspector call the pit operator before going to the site to ensure proper communication.

Rick Patenaude asked if all other pits are being inspected. The Board stated that they all excavation pits will be inspected twice per year. Mr. McElroy stated that the process is being developed to meet this requirement.

Mr. Osgood asked that the administrative details be settled before proceeding. The applicant and Planning Board agreed that the Planning Board will appoint someone to inspect the excavation operation on or about April 1st and November 1st of each year, and the designated inspector will be required to call the operator before going to the site.

Ms. Scott stated that there will be a legal document in addition to the Notice of Decision outlining the process. This will be a binding agreement signed by both parties.

Chairwoman Claire stated that she feels strongly that the Town Engineer should be involved in the process, at least at the beginning. She stated that perhaps the Code Enforcement Officer could be trained to fill the role at a later date.

Mr. McElroy stated that he understands that the CEO is not comfortable with this job right now; however, he was hired to provide services to the Town.

Ms. Stamps reviewed her memo dated March 5, 2009. She stated that the legal document outlining the phasing and financial stipulations is required as well as final plans, stamps and signatures. She stated that the applicant will draft the legal document outlining the phasing, financial and inspection details; the Board will review it and send it to Legal Counsel for review. Once the condition has been met, they will inform the Town's financial director that an escrow account needs to be set up for this project.

Ms. Stamps asked to review Earth Moving Regulation 201-6A(3)(f) to ensure compliance with all regulations. Ms. Scott stated that 201-8H, 201-8O, and 201-8P will be listed as requiring the applicant's compliance in the Notice of Decision. It was stated that the permit is applicable for two years so as long as the applicant renews the permit before expiration, the requirement of 201-8P will not apply. It was stated that requirement 201-8Q is not really needed if the Board approves this plan. Section 201-8N relates to the bond issue and will be covered by the additional legal document that was discussed.

The Board and applicant agreed to Mr. Vignale's cost opinion of \$32,500 bond and \$9,500 cost of each additional swathe.

Ms. McCourt stated that the reclamation plan details the types, sizes and number of plants that would be necessary. This is stated in note #2, page 7 of the plans. The detailed analysis of restoration costs will be part of the legal document and will be part of the approved plans and file.

Chairwoman Claire asked if there was any public comment about this case. Hearing none, the public hearing was closed at 8:00 pm.

There was some discussion about whether the legal document needed to be reviewed and accepted before voting for or against the plan's approval. Ms. Scott explained that acceptance of the legal document could be made a condition of approval.

Mr. Osgood asked to discuss conditions before a motion is made. He stated that this project involves taking native woodlands and excavating stone, and he also asked about truck traffic. Ms. McCourt stated that they are only blasting rock to make material the size that it can be trucked. No processing of material will occur on the site. There was discussion about access to the back side of the property from Mink Hills Road. The use of safety fencing was also discussed.

Mr. Osgood stated that the plan is to come back to phase the operation until the entire 12 acres is excavated. The applicant plans to utilize standard dump trucks traveling on Rte. 114 to the private road at Henniker Crushed Stone. He reviewed that they anticipate 100 truck trips per day as the average daily traffic.

Ms. Scott listed the following as conditions of approval:

- 1) escrow money to be paid by the applicant (amount to be determined);
- 2) phasing and financial guaranty agreement approved by Town Counsel and the Planning Board;
- 3) final plans with the required stamps and signatures

A note will be included in the Notice of Decision that requirements 201-8H, 201-8O and 201-8P must be met.

Jim McElroy **MOVED** to approve the application for Case 2008-011 with the following conditions: 1) escrow money to be paid by the applicant (amount to be determined); 2) phasing and financial guaranty agreement approved by Town Counsel and the Planning Board; 3) final plans with the required stamps and signatures. Kellie Dyjak **SECONDED** the motion.

Discussion: Mr. Osgood stated that the wetlands permit expires in five years and cannot be renewed. Ms. McCourt stated that the crossing will be a permanent structure and will not change the road or phasing plans.

Motion **PASSED UNANIMOUSLY. (6 in favor** (Ms. Claire, Mr. Guzouskas, Ms. Stamps, Mr. McElroy, Ms. Dyjak, Mr. Osgood) - **0 against.**

February 25, 2009 Meeting Minutes – Review and Approve

There was discussion about the Town’s policy to accept anonymous requests for investigation of code violations. Ms. Scott stated that she would accept concerns from an anonymous source; however, the former Code Enforcement Officer would not. Mr. McElroy said there is a form where someone can indicate their desire to remain anonymous. The Board of Selectmen is responsible for setting policy on the matter.

Ms. Stamps **MOVED** to approve the minutes of the February 25, 2009 meeting as amended. Mr. McElroy **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (6-0).**

Rules of Procedure – Review and Approve Draft Revisions

Ms. Scott recommended changes within the document for the Board’s review. The term “clerk” refers to Town staff. Meeting times must be posted according to the “Public Right to Know” law.

Ms. Scott stated that “Design Review” is an intermediate step between Conceptual Consultation and Site Plan Review. This section would be necessary for inclusion if the Board ever wanted to implement this process.

There was discussion about having the Board Chairperson poll the members at 10:00 pm about continuing with a meeting or not. It was the Board’s consensus that this is a good practice.

Mr. McElroy **MOVED** to approve the Rules of Procedure as revised. Mr. Guzouskas **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (6-0).**

Earth Excavation - Active and Inactive Excavation Operator Memo

Ms. Scott drafted two different letters to be sent to active and inactive pit operators asking about the status of the parcel of land. Mr. Guzouskas provided typographical changes to Ms. Scott via email. Ms. Scott stated that the letter could be sent on Monday, March 16, 2009 asking for information to be returned to the Town office by a March 31, 2009 deadline. It was decided that the recipient may respond by phone, email, fax or postal communication. Ms. Scott stated that if

someone calls in response to the letter, she will write a memo documenting the information so that there is a written record of the communication.

Ms. Dyjak suggested that a log be maintained in the office to record when Board members or Town staff visit an excavation site. She stated that a master checklist would be helpful in completing required inspections.

Ms. Stamps asked that the letter be revised so that the request for information is clear and specific. The Board needs to know the date excavation stopped and the date that reclamation was completed.

(Ron Taylor, Selectman ex-officio, and Leon Parker, Alternate Selectman ex-officio joined the Board at 8:52 pm.)

Mr. Osgood stated that the March 31st deadline seems like a very quick response time. Ms. Scott stated that she is assuming that the pits in question are inactive pits, so the information should be readily available.

Ms. Scott stated that the second letter that was drafted is for active pit operations. If they are active pits, all information should be in place. Pit operators can call, email, fax or mail their responses to the Town office. Ms. Scott will follow up any verbal communication with a written memo.

There was discussion about what happens if pit operators do not respond to the request for information. Ms. Scott stated that a second letter will be sent copied to Legal Counsel and DRA. If no response then, a third letter will be sent from Legal Counsel. This process was determined by the Board in a prior meeting.

There was discussion about what the repercussion could be for the Town if the Planning Board does not follow through on this matter. DRA cannot sue the Town; however, someone else may be able to if proper procedures are not followed. Mr. Parker stated that the State agency may stop the excavation operation.

Ms. Scott stated that the letters will be sent out on Monday with the suggested changes.

Member Binder Updated

- ❖ Table of Contents
- ❖ New Tabs #16-#18
- ❖ Page 2 of Site Plan and Subdivision Applications (Tab #12)
- ❖ Driveway Regulations (Tab#8)

Board members updated their binders with the new information.

Miscellaneous

- ❖ Town Meeting (Ballot Day) Follow-up: Rick Patenaude and Ed Miner were voted to be full Planning Board members. Jeff Roach is willing to be an alternate member. He is to write a letter of interest, and the Board can appoint him.
- ❖ Outlook Article: Ms. Scott will write an article for the spring issue.
- ❖ Building Inspector/Code Enforcement Officer Job Description was given to Board members.
- ❖ Planning Consultant Position: Ms. Scott reported that she gave her notice of resignation to the Town. She will continue working and will attend Planning Board meetings until April 5, 2009. She will not be attending ZBA meetings. She will continue working part-time for the Town until May. A new contract is required for her services through April. The Town Administrator and Board of Selectmen will work on this after the Town Meeting. Ms. Scott stated that she is implementing a transition plan with other Town staff. The Board expressed appreciation for her work for the Town.

It is noted that Mr. McElroy and Mr. Guzouskas have completed their terms on the Planning Board with this meeting.

Adjournment

Mr. Guzouskas **MOVED** to adjourn the meeting at 9:20 pm. Ms. Stamps **SECONDED** the motion, and it **PASSED UNANIMOUSLY (7-0)**.

Respectfully submitted,

Jennifer A. Astholz
Recording Secretary