

Henniker Planning Board

Wednesday April 8, 2009

Draft Minutes

Call to Order/Attendance

Members Present: Kristin Claire, Chairperson; Ed Miner, Vice-Chairperson; Terry Stamps; Scott Osgood; Rick Patenaude; Ron Taylor, Selectman, ex-officio; Leon Parker, Alternate Selectman, ex-officio

Members Absent: Kellie Dyjak and Jeff Roach

Others Present: Laura Scott, Planning Consultant; Jenn McCourt; James Seymour, Sebago Technics, Inc.; David Foster; Gary Harper; Paula Amato; Alan Michie; Jason Michie; Jennifer Astholz, Recording Secretary

Conceptual Consultation

New England College Multi-Purpose Athletic Field (Map 2 Lot 391A in ED District)

James Seymour, from Sebago Tehnics, Inc, presented a written narrative explanation and a set of plans for a proposed multi-purpose artificial turf field located in the Educational District. He showed the plans to develop a field over the existing parking lot. He stated that they would need to apply for an Alteration of Terrain permit from DES as the proposed field is 250' away from the Contocook River. Mr. Seymour stated that the addition of this artificial turf field is important to the college's athletic program as it will upgrade the playing surface for the soccer, lacrosse and field hockey teams. The field is designed to meet the smallest Division I playing field size. The field is designed to be at approximately the same elevation as the existing parking lot. Mr. Sebago explained the design of the artificial turf field and the use of a state-of-the-art rubber/silica mixture used in its construction. He presented a sample of the artificial turf to the Board members. He stated that they have met with representatives of the Army Corps of Engineers, and they agree that construction of this field does not create any adverse effects on the river. Mr. Seymour stated that the proposed design redirects activity from the Western Avenue fields. The location of the proposed field provides for an excellent buffer for the neighbors. He stated that he, Ms. McCourt and representatives from New England College are here to answer questions and to take input from the Board.

Jennifer McCourt, of McCourt Engineering, stated that the proposed area to be developed is currently a paved parking area. This plan reduces the impervious area which is better for the environment. She stated that adding the artificial turf field keeps college athletics viable and increases student recruitment opportunities for the college.

Chairperson Claire asked Mr. Seymour if the Army Corps of Engineers thought the project was a good idea. He stated that the project is just inside the edge of the shoreline protection line. There is no substantial work being done along that edge of the shoreline which will cause any disturbance. He stated that the field has a "hip-roof" design and shape to it with a one-half percent pitched crown in the field. Ms. McCourt stated that the field design incorporates an extensive drainage system. Mr. Seymour stated that the artificial turf design slightly increases the 100-year floodplain capacity.

Chairperson Claire asked where people will park since a parking lot will be taken over by the field. Mr. Harper from NEC is working on plans for an alternative parking plan. The existing lot has 174 spots for

general student parking; Mr. Seymour stated the lot is usually approximately 33% full. Ron Taylor stated that he counted 95 filled spaces in the lot at 2:00 pm today which is over 50% full. Mr. Taylor stated that the parking issue is his major concern with this proposed design. He asked where there is a place in Town to park those 95 cars that were there today.

Scott Osgood stated that the field is designed to be 4 feet below the flood elevation. He asked what happens to the artificial turf field when it is submerged under water. Mr. Seymour stated that the field would stay submerged and would not float. He stated that they would have to regrade the infill after being submerged under water. He stated that there is a machine that is designed to pick up and refill the infill material (cryogenic crumb rubber). Mr. Seymour stated that the turf is designed with clean-out cuts to flush out the debris and there are ways to clean mud out of the system. He stated that there may be more concern in the case of a flash-flood scenario. Ms. McCourt stated that the field material would be similar to what is used at the Bow Fieldhouse. Mr. Seymour stated that the turf would be the same as that used at Gillette Stadium for the New England Patriots.

Mr. Osgood asked if any test pits have been done on the site. Mr. Seymour said that they are waiting for results from initial tests and are confident that the tests will show adequate drainage.

Mr. Seymour described the proposed lighting of the project. He stated that curved shielded lighting is proposed so that light is directed onto the playing surface; the 80' poles allow for the proper height to focus lighting on the field. He stated that four light poles would be placed symmetrically across the field. These lights can be remotely controlled and timed by computer. They will provide photometrics to the Planning Board. He stated that some additional lighting may be added for security. Ms. McCourt stated that the lights are expensive to operate, so they will only be used when necessary. She stated that most of the games begin at 4:00 pm.

Terry Stamps stated that she is also concerned about the parking that will be displaced by this plan. Laura Scott stated that there is no Town parking requirement standard in the Educational District for arenas. Ms. Stamps stated that she would like to see a plan showing where the displaced cars would be parked.

Ms. McCourt stated that public restroom facilities are located in the field house which will be an improvement to current arrangements.

There was discussion about Grove Street. Ms. McCourt stated that Grove Street was a Class VI road that the college has maintained. She has been talking with Cindy Marsland in the Town office about it. Leon Parker stated that he believes Grove Street was a Town road that has not been maintained for over five years, causing it to revert to a Class VI road. Mr. Taylor stated that there are monument remnants at the right-of-way to the railroad line. Chairperson Claire stated that this is an issue to be decided by the Board of Selectmen. It is unclear where Grove Street ends.

Chairperson Claire asked for the measurements of the field. Mr. Seymour stated that the field measures 350' x 215'. Mr. Seymour stated that plans call for the field to be fenced all the way around; this helps to alleviate problems caused by dogs, the general public, etc.

Mr. Taylor stated that Circle Street will be used to exit the field area, and this is a concern as well. Ms. McCourt stated that the arena is currently used now, and shuttle service has successfully been provided for large events.

Ms. McCourt stated that the next step is to go before the ZBA for the proposed field plan as a special exception is needed. She stated that they hope to get approval for the field soon as it will take most of the summer to construct.

Mr. Seymour and Ms. McCourt thanked the Board members for their consideration and comments.

March 25, 2009 Meeting Minutes – Review and Approve

Ron Taylor **MOVED** to accept the minutes of the March 25, 2009 meeting as corrected. Ed Miner **SECONDED** the motion. Motion **PASSED, 5-0-1**. Terry Stamps abstained as she was not present at that meeting.

2009 Traffic Count Location Request

Laura Scott stated that the Police Department, Highway Department and the Board of Selectmen were given the opportunity to request traffic count locations but did not respond. After discussion, the Board members decided to request studies at the following points:

- 1) Western Avenue at Newton Road (east side of Newton Road; just west of Liberty Hill Road);
- 2) Post Office Place at Route 114;
- 3) Intersection of Western Avenue and Route 114 (by Henniker Pharmacy)
- 4) Western Avenue west of the bridge;
- 5) Old Concord Road between stop sign and Stone Falls Road

Draft Earth Moving Regulation Amendments

Laura Scott had been asked by the Planning Board to look at the Earth Moving regulations and compare the Town ordinance to the State RSA 155-E. She reviewed her memo dated April 3, 2009 outlining her findings. She stated that she has not yet sent the document to Town Counsel for review. Chairperson Claire suggested that the Board review and discuss one section at a time.

Rick Patenaude stated that he understood that Ms. Scott was going to overlay the Town regulations onto the State RSA. He stated that he was confident that the Board members can compare the regulations without paying Ms. Scott billable hours for a job that they could do themselves. He stated that people that work in the industry have come to meetings to help them with their task, and he has volunteered to do this as well. Mr. Patenaude stated that he respected Ms. Scott's work, and does not mean to offend her, but it is his opinion that it is not necessary to pay her to do this. He stated that he was under the impression that the Planning Board just needed to develop the process to come into compliance with the State RSA's.

Chairperson Claire stated that it is in Ms. Scott's job description to help the Board come into compliance on this matter. She stated that it is clear that the Board needs to go through this process to accomplish the task.

Leon Parker stated that most of the Board members supported Rick's idea at the last meeting to use the State RSA and overlay the Town's requirements with that. What is being presented tonight looks like a revised draft.

Scott Osgood stated that the Board has an obligation to monitor the regulations of earth moving operations. The Board decided at the last meeting to have Ms. Scott review the State RSA and the Town ordinance and report the differences to the Board. He stated that they should be able to review this pretty quickly.

Mr. Patenaude stated that State laws already exist which must be followed. He stated that there is not much case law about this to refer to, meaning that the laws must be written well enough to be followed.

The Board returned to the task of reviewing the draft regulations prepared by Ms. Scott.

There was discussion about the inclusion of sections regarding authority, purpose and scope. These sections are included as a legal component if used in court and are not for regulatory use.

The State RSA's do not include these sections; however, the sections are necessary in the Town regulations.

Ms. Scott stated that the draft shows all definitions in one place (201-3) and they conform to what is in RSA 155-E. She stated that the State does not define the terms "grandfathered" or "exempt."

The Board decided that while this is not a public hearing, they would like to hear any comments from the public at the end of each section being discussed.

Ms. McCourt asked if Section 201-2B (scope) is repetitive. Ms. Scott stated that this is administratively done during the permitting process and is described later in the document. There was discussion about the difference between the initial Planning Board approval process and the bi-annual permitting process.

Regarding Section 201-3, the Board members asked for Ms. Scott to include references to the State RSA throughout the document. Ms. Scott stated that it follows RSA 155-E:2 and 155-E:2-a; there are no additional requirements included in the Town regulations, but it is easier to read.

Mr. Parker referred to the initial discussion about only referencing the RSA as it will be consistent and will make it easier if any changes are made to the RSA's. Mr. Patenaude also stated that he would like to have only the reference to the RSA as the information is readily available.

Chairperson Claire stated that she believes that Town ordinances should be fairly easy for people to read as they are meant for everyone, not just those that are actively involved in the industry.

Ms. McCourt stated that it has been her experience that many attorneys suggest keeping the same titles as are used in the State RSA's. Ms. Stamps agreed with keeping the titles and order consistent throughout the document.

Alan Michie asked for discussion about excavations allowed from boundary lines as stated in Section 201-5: Prohibited Projects. Ms. Stamps stated that she believes that the Town should be more restrictive than the State on this issue. Chairperson Claire stated that people have the legal right to quiet enjoyment of their property and believes that excavation occurring 150' from a property line is too close. She stated that the regulations call for excavations to be done 250' from the residence, not the property line. She stated that there must be a careful balance between the needs of all of the residents of the Town. Ms. McCourt stated that there are big differences in the amount of disturbance between the types of excavation being done (i.e. sand and gravel). Ms. Claire stated that the needs of everyone must be considered, not just the needs of the excavation owners.

Mr. Patenaude expressly asked for it to be recorded in these minutes that he takes offense to the comments made implying that he is making money from the current regulations. He stated that his comments are based on sound principles; and any other excavation business that comes into Town will only be his competition which will drive the costs down, so he will not be making more money.

Mr. Osgood stated that the regulations allow for excavation to occur 50' from the boundary line and 250' from the residence. He stated that the operation could actually occur closer than what the State allows depending on where the house is located on the lot.

Chairperson Claire stated that the regulation allowing excavation 250' from the residence of the nearest disapproving abutter has been in these regulations for a long time. She stated that there is nothing new being proposed, and this is one area where the Town regulation is more restrictive than the State.

When asked about any other restrictions, Ms. Scott stated that the Town Engineer added the comment in Section 201-5F "except where the excavation is in ledge".

There was further discussion about the arrangement of the document. Mr. Miner suggested that a statement could be added that in addition to following RSA 155-E, all additional Town regulations can be found in the addendum at the end. Mr. Osgood stated that it is common practice for conducts and codes to be written that way.

Ms. Claire stated that the Town ordinance will follow its own numbering, but it will have the same titles and reference the State RSA. Ms. Stamps stated that it would simplify matters if any changes/additions were inserted to the appropriate sections throughout the document rather than listed at the end.

Ms. McCourt stated that Town regulations must be able to legally stand on their own. Addendums are included later to rectify a situation not addressed within the document. Mr. Miner stated that would require rewriting the entire document. Alan Michie stated that people in the industry are used to working with the State RSA and Town addendums.

The discussion continued about how the document should be organized and written. It was also noted that any changes that occur at either the State or Town level will have to be carefully changed throughout the document.

Ms. Claire stated that there seems to be differing perspectives about how the document should be written between those who are familiar with RSA 155-E and those who are not.

Continuing with the review, Ms. Scott stated that Section 201-6 is lengthy as it describes the Town requirements for the application process. Ms. Scott stated that most of the additions were suggested by the Town Engineer. Ms. Scott stated that she was trying to make it easier to describe the application process.

Ms. McCourt stated that there are reasons why sections are in different places in the State regulations. She said that there are different needs for existing pits and new pits. Mr. Miner stated that the State's intent and the Town's intent differ from each other. Ms. Claire stated that this document is only concerned about approval of new pits. Ms. McCourt stated that it is confusing unless the purpose of the document is clear.

Mr. Patenaude stated that there is a reason why the State wrote the regulations the way they did. The regulations have not been challenged much in court which means they must work fairly well. Mr. Patenaude stated again that he is willing to rewrite the document and not spend Town money to do it.

Ms. Claire stated that Ms. Scott is a staff person with the knowledge to go through this process, and they have a budget to pay for this work. Mr. Parker stated that if Ms. Scott does the work as described by the Board, he does not have a problem with her working on it.

Ms. Scott will make the changes as indicated by the Board for continued review at the next meeting.

Inactive & Active Excavation Operations - Update

Ms. Scott stated that she emailed the excavation updates to the Board members. One pit lost the “grandfathered” status, and many of the inactive pits have changed use. Ms. Scott stated that a second letter with a copy to Town Counsel will be sent to those landowners who did not yet respond. She stated that there were several requests for extensions of requested information.

There was discussion about the site that lost its grandfathered status with a change of ownership. Ms. Scott said that she would write a letter to this owner instructing him to come to the Planning Board to discuss the matter.

Mr. Osgood asked if Ms. Scott should be writing the letter to the landowner since she is not a Town official. Ms. Claire said that she was authorizing Ms. Scott to write the letter, although she would sign it as the Planning Board Chairperson if the Board thought that to be appropriate.

Ms. Scott suggested that the letter be copied to the Board of Selectmen, the Tax Assessor and DRA. Mr. Osgood stated that the property owner should be given the opportunity to respond before reporting him to other agencies. He stated that the Planning Board is going through a learning process in handling these compliance measures, and he feels that this is getting ahead of the process.

Ms. Claire stated that the Planning Board was given the authority and responsibility of regulating excavation operations back in 1981, although the Town has ignored this charge. The process is now being changed, and it was discovered that someone is not in compliance. Ms. Claire stated that RSA 155-E says that the Board is responsible for notifying others. Mr. Parker stated that he has read the RSA and does not see that the requirement to notify anyone else.

Ms. Scott stated that the property lost its grandfathered status, but the Board of Selectmen signed the intent to excavate. Other Board members stated that they feel that the Board of Selectmen must be notified, but it is not necessary to include the tax assessor or DRA at this time.

Ms. Claire stated that she believes that a copy of the letter should go to the assessor and to DRA.

Mr. Parker stated that the Board of Selectmen signed the permit, so DRA knows that there is excavation at that site already.

It was decided to write a letter to the landowner to come in to discuss the matter with the Planning Board. A copy of the letter will be sent to the Board of Selectmen at this time.

Ms. Scott stated that there are three other sites (two owners) that will receive a letter stating that they are no longer in compliance and must come before the Planning Board. She stated that all but one active pit owner responded to their request for information.

Ms. McCourt stated that the operators are really concerned about the bonding issue. She stated that a good business person will not give out information without knowing the consequences. Mr. Patenaude stated that these businesses could be bankrupt if they are required to follow the bonding process as stated in the rules.

Mr. Osgood stated that the Planning Board is not trying to financially ruin businesses; he stated that they do not intend to negatively impact them at all. The requests are being made to fix the paperwork in the files. He appreciated the insight from Ms. McCourt and Mr. Patenaude about what the business owners are thinking.

Ms. McCourt stated that the Planning Board has ignored this issue for 30 years, and must give the businesses time to understand the intent and process. Ms. Claire stated that this is an interesting perspective, as she has only thought about getting the files into order and has not really considered the bonding issue yet. She stated that the Board has to make it clear to the business owners that they are really only trying to collect information at this time. Mr. Patenaude stated that the Board members must realize that government has a tremendous amount of authority over these peoples' livelihoods, and we have to work with the people to resolve this. Ms. Claire stated that some sort of balance must be reached.

Mr. Osgood left the meeting at 10:00 pm.

Ms. Scott stated that there are files with literally no information in them. These letters were sent in hopes of just getting information updated in the files.

Mr. Parker stated that he does not see any requirement for instituting a bond for grandfathered pits, so this may not even be a concern.

Ms. Stamps stated that the Board does not need detailed information to theoretically discuss the process. She suggested that the next work session be devoted to working on ideas to work with the individual business owners. She stated that they must develop flexible ways to meet their responsibility.

Ms. Scott stated that she will send a letter to those businesses that are clearly in violation, and she will also send letters to those that are inactive but have not yet responded.

Member Binder Updated

Ms. Scott provided information to the Board members to be placed in their binders.

Miscellaneous

Ms. Scott stated that a new Town Planner has been hired to replace her. Ms. Scott plans to work with him on April 17th and will provide information to the Town staff to plan for a smooth transition.

Adjournment

Mr. Taylor **MOVED** to adjourn at 10:23 pm. Mr. Parker **SECONDED** the motion. Motion **PASSED, 5-0**.

Respectfully submitted,

Jennifer Astholz