

**TOWN OF HENNIKER  
PLANNING BOARD**

**April 22, 2009**

*Approved Minutes*

**Call to Order/Attendance**

**Members Present:** Kristin Claire, Chairwoman; Ed Miner, Vice-Chairman; Terry Stamps; Rick Patenaude; Kellie Dyjak; Ron Taylor, Selectman, ex-officio; Leon Parker, Alternate Selectman, ex-officio; Jeffrey Roach, Alternate

**Members Excused:** Scott Osgood

**Others Present:** Laura Scott, Planning Consultant; Caleb Dobbins; Tom Patenaude; Alan Michie; Denis McComish; Rodney Patenaude; Jennifer Astholz, Recording Secretary

Chairwoman Claire called the meeting to order at 7:00 pm. She noted that Alternate Jeff Roach will be voting in the place of Scott Osgood during this meeting.

**April 8, 2009 Meeting Minutes – Review and Approve**

The minutes of the 4/8/09 meeting were reviewed and corrected. Terry Stamps **MOVED** to accept the minutes as amended. Ed Miner **SECONDED** the motion. Motion **PASSED, 6-0-1**; Ms. Dyjak abstained as she did not attend that meeting.

**CNHRPC Appointments**

Chairwoman Claire stated that Scott Osgood and Jim McElroy are the current appointees to this committee as representatives of the Town of Henniker. She stated that Mr. McElroy had stated at previous meetings that he would like to continue in that role until his term expires in June. Mr. Osgood had previously indicated that he would also like to continue on that committee. Kellie Dyjak volunteered for the open appointment when Mr. McElroy's term expires. Laura Scott stated that she would prepare the paperwork for the Board of Selectmen to act on the upcoming appointments.

**Board Discussion on Grandfathered Active Excavation Operations**

Chairwoman Claire explained to the audience that the Board is not discussing changes to the excavation regulations this evening; they are only discussing existing pits and what information the Planning Board is requesting from them to update the files. She explained that they are trying to develop the steps that should be taken to accomplish this goal. Ms. Scott had been asked to provide an update of all the pits and report on the acreage being excavated. Ms. Scott reviewed her memo dated April 17, 2009.

Chairwoman Claire suggested starting with discussing the goals and objectives of this project. She stated that she wants the Planning Board members to understand the underlying need for this action. She stated that monitoring excavations is a responsibility

of this Board, and the first step in the process is to determine what information is contained in the files. Ms. Claire stated that the State RSA's are already clear on what the Board's responsibility is, and the Board must follow through on the charge given to them at the 1981 Town Meeting. Ms. Claire stated that it is her vision to update the files and inspect the active excavation operations two times per year per RSA 155-E.

Ms. Stamps stated that an additional objective is to clarify the requirements which is equally important for the property owners as well as the Town.

Rick Patenaude stated that the new Town Planner, Mark Fougere, is reputed to have a lot of experience with the excavation industry and may be able to offer assistance to the Board members. Mr. Patenaude **MOVED** that the Board wait to do any more work regarding excavations until Mr. Fougere is working with the Board. Mr. Taylor **SECONDED** the motion.

Ms. Stamps asked what reason was given for Mr. Fougere not to attend the meeting. Ms. Claire and Ms. Scott indicated that he was welcomed by them to come and was given a Board packet of information. It was noted by Ms. Scott and Ms. Claire that the Town Administrator had instructed Mr. Fougere not to attend the Planning Board meeting this evening. This is Ms. Scott's last meeting in her role as Henniker's Town Planning Consultant, and Mr. Fougere will assume the role henceforth. They surmised that the Town Administrator asked him not to attend since it was Ms. Scott's last night in this position.

Mr. Miner stated that he believes that Mr. Fougere will bring valuable assets to the discussion. Mr. Miner stated that the Board members need to agree what they want to do with the information they have, and that can be discussed amongst themselves without discussing the technical aspects of the regulations.

Mr. Patenaude stated that he would like to have a chance to more carefully review the chart that Ms. Stamps prepared and distributed to the Board this evening. He requested that his motion stand as stated.

The vote on the motion to wait to discuss the matter further **FAILED, 2 - 5**. Mr. Patenaude and Mr. Taylor voted in favor of the motion; Ms. Claire, Ms. Dyjak, Mr. Miner, Ms. Stamps and Mr. Roach voted against the motion.

Ms. Stamps stated that she created the chart to summarize the laws governing excavation operations. She stated that she wanted to show what was required in the regulations and also included notes taken from other documents and RSA's. Ms. Stamps reviewed the chart and explanations for the categories. She explained that Column B could be confusing to interpret, but generally, one would need a permit if the operation is being expanded. Ms. Scott stated that most of the property owners submitted their entire lot as the excavation area for grandfathering status. She stated that this was designed to make sure they are staying within the grandfathered lot. If the same owner owned an adjoining lot, they would still need a permit to excavate into the adjoining lot if it was not part of

the original grandfathered area. She then stated that a change in ownership changes the grandfathering status of the property. She stated that if ownership of the land is transferred, the grandfathered status is lost.

Mr. Patenaude stated that he respectfully disagreed with those comments and does not believe them to be accurate. He stated that he will find the information supporting this claim for the next meeting.

Ms. Stamps stated that information regarding RSA 72-B is important for the property owners as the taxation process can change. She stated that they may or may not have been taxed correctly based on information in the Town records. Chairwoman Claire stated that there is a memo from Cindy Marsland to be discussed later in the meeting.

Mr. Miner asked what the Board envisions happening if they verify the Town records, inspect the excavation operations and find that property owners are not in compliance. Mr. Taylor stated that a reasonable amount of time must be given to the property owners to come into compliance. Ms. Stamps stated that the Board needs to first clarify what they really need before consequences for infractions can be discussed. Mr. Miner stated that if the property owners are unwilling to give information to the Board because they are afraid of being penalized, early discussion about consequences would be helpful.

Mr. Patenaude stated that it is his opinion that the work can be done successfully if it is approached logically and slowly with the assistance of the pit operators. He stated that it would be good to have open meetings with the property owners to discuss concerns, such as bonding issues.

Ms. Claire stated that the Board is only interested in meeting the basic minimum requirements for getting into compliance with the RSA's and does not believe that many changes will have to be made.

Mr. Patenaude stated that the Town regulations may be more relaxed or more stringent than the State RSA's in specific areas. He stated that this has been neglected for 30 years; he suggested that the Board straighten out the regulations then meet with the property owners to discuss strategy of satisfying the requirements. He stated that setting an impending deadline is unrealistic and will lead to hard feelings, potential law suits, etc. He suggested: 1) re-writing the Town regulations; 2) filling the Town files with information as necessary; 3) discuss reclamation and bonding processes.

There was discussion about RSA 155-E being the minimal criteria that must be met. A Town may impose more stringent requirements on excavation operations if they choose to do so. Mr. Miner stated that any new regulations would only apply to new operations and will not govern existing sites.

Ms. Claire stated that a representative of the State agency made it clear that it is the Planning Board's responsibility to regulate RSA 155-E.

Mr. Patenaude stated that he was not comfortable with this discussion and expressed that the Board should not be trying to proceed without guidance. Mr. Patenaude **MOVED** to stop further discussion about excavation operations. No second was heard to his motion, so no vote was taken.

Chairwoman Claire stated that it is the Board's responsibility to understand this issue, and she does not want to become dependent on the new Town Planner to instruct them on how to proceed. She stated that they must meet the minimum standards of RSA 155-E, and this has nothing to do with the Town regulations.

Ms. Scott interjected that only the newly-approved pit and two pits owned by Mr. Denis McComish must comply to the current Town ordinance; all others must only comply with RSA 155-E due to their grandfathered status.

Chairwoman Claire asked the Board members how they wanted to proceed with this issue. Ms. Stamps suggested that they identify questions that they have about RSA 155-E. Mr. Taylor stated that they must resolve the question about how transference of property affects the grandfathering status. There was more discussion about the process if the information is inadequate to determine compliance of the existing pits.

Chairwoman Claire read aloud a memo sent to the Board of Selectmen from Cindy Marsland, the Town Assessing Technician. Mr. Taylor stated that the Board of Selectmen received three notices of Intent to Excavate to be signed. The Board of Selectmen has instituted a policy for the forms to be reviewed by the Planning Board first to determine if the sites are in compliance before the Board of Selectmen sign off on the paperwork.

Leon Parker explained that the Board of Selectmen wanted to institute a process through the Planning Board to determine whether the Intents should be signed or not. Ms. Stamps recommended that the requests come to the Planning Board for review and then be given to the Planning Consultant for verification. It was noted that a response must be given to the applicant within 30 days of the date of filing the Intent to Excavate.

Regarding Ms. Marsland's memo, Ms. Scott stated that Lot 678 is in compliance and may be signed; the permit for Lot 679 expired four years ago, and therefore is no longer in compliance; more information is required to determine the status of the request for Lot 607.

Mr. Parker stated that the Board of Selectmen has asked Mr. Flynn to come up with a system for the Planning Board to review the Intent to Excavate requests.

Rick Patenaude stated that he was confused by the discussion of the relevance of the Town regulations if the major issue is to be in compliance with RSA 155-E. He asked why the Town regulations were sent out with the letter requesting information from the pit operators when some of the Board members are indicating that they are not relevant to their grandfathered sites. Ms. Claire stated that Chapter 201 (Earth Moving) and RSA

155-E ask for the same information to be kept in the files, so the copy of the Town ordinance was sent with the letter.

Ms. Stamps suggested that having a meeting with the property owners to review the requirements could be more efficient than sending letters. She stated that she would like the opportunity to meet with them about the operational and reclamation standards. Mr. Parker stated that the Planning Consultant could offer to visit the operators at their sites to discuss the information; then they would only have to come to the Planning Board if they are requested to do so. Ms. Claire stated that she also does not mind extending an invitation for the property owners to work with the Planning Consultant to update the files.

There was much discussion about the type of information that is necessary to have in the files since granting the grandfather status. Ms. Claire stated that minimum reclamation standards are supposed to be in the files. Ms. Stamps stated that 155-E.5 outlines the minimum requirements. Mr. Parker stated that 155-E.5 establishes the standards, but it does not outline the specific information that must be recorded in the file. He stated that this section can be used to inspect a pit but cannot be used to demand plans.

Mr. Patenaude asked to be shown the requirement for a reclamation plan to be in the file.

Ms. Stamps asked for permission to poll the property owners in the audience to ask what would be most efficient for them.

Alan Michie stated that he invited Ms. Scott to visit his business. He stated that he would rather show someone what they do and what the reclamation process is at the site. Mr. Michie stated that he has attended three or four Planning Board meetings to see how to best work with the Town. He stated that as a business owner and resident of Henniker, he has the Town's best interest in mind. He stated that he welcomes anyone to come to his place of business to discuss these matters.

Chairwoman Claire stated that the Planning Board has fallen short in keeping up with its responsibility to inspect excavation sites two times per year. The Planning Board is not yet in compliance with their regulations, and this is the beginning of fixing that problem.

Caleb Dobbins stated that they are required to file a report every year which shows the permitted area and the open acreage (Intent to Excavate). He stated that this creates a record of history, and it would be silly for a business not to reclaim the site in order to get the lower tax rate. He stated that a property owner is paying much higher taxes on unreclaimed property, so there is no incentive to ignore the regulations.

Denis McComish stated that the Tax Assessor has been to visit his operation. He stated that his excavation operation existed long before 1979 and should have been grandfathered. He stated that he has always submitted the Intent to Excavate forms to the Town. He stated that the Planning Board approved his operation long ago, but they are now refusing to sign the Intent due to administrative oversight.

Ms. Claire stated that the situation cannot be addressed because it was never a grandfathered pit. Ms. Scott stated that his permits expired four years ago, and the Board of Selectmen should not have signed off on the operation.

Mr. Michie stated that he does not believe that the Town is handling this situation correctly. He stated that the owner has paid his dues, and the Town took his money. The Town made the mistakes and is now saying that it doesn't matter.

Ms. Claire stated that the Board cannot change the lack of grandfathered status on a lot. The owner just needs to fix the situation by coming in to get a new permit.

Mr. Miner suggested that the new Planning Consultant could be sent to meet with the property owners to begin to build a mutually beneficial working relationship. As these relationships are built, individual recommendations could be made for how each operation should be handled.

Mr. Patenaude requested that the Board move cautiously and honorably throughout this process. He stated that he believes Mr. Michie to be correct about his grandfathered status. He agreed that issues could be handled correctly if done slowly and with care.

Mr. Miner **MOVED** to have Mark Fougere, Town Planner, meet with each pit owner to update files and meet the first inspection requirement. Mr. Patenaude **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

### **Miscellaneous**

\*Ms. Scott stated that a memo was received from Michele Gagne of the UNH Community Profile project. She stated that there was a good turnout from the community and a follow-up meeting is scheduled on May 4 from 6:30 – 8:00 pm.

Ms. Claire stated that she would like the minutes to reflect that this was not a Planning Board project; hence, Board members were not required to attend.

\*There was discussion about updating the Master Plan. Money will need to be set aside for this future project. Ms. Scott stated that there are ways to update parts of the Master Plan without doing the whole thing. The Conservation Commission has done a lot of work in some areas which will be helpful.

### **Adjournment**

Kellie Dyjak **MOVED** to adjourn at 9:08 pm. Rick Patenaude **SECONDED** the motion, and it **PASSED UNANIMOUSLY**.

Respectfully submitted,  
Jennifer Astholz