

HENNIKER PLANNING BOARD

September 9, 2009

Draft Minutes

Members Present: Kristin Claire, Chairwoman; Ron Taylor, Selectman, ex-officio; Kellie Dyjak; Terry Stamps; Rick Patenaude; Scott Osgood; Leon Parker, Alternate, Selectman, ex-officio; Jeff Roach, Alternate

Others Present: Mark Fougere, Town Planner; Tim Hannon; Bill Russell; Shawn Richard; Thomas Howard; Jennifer Astholz, Recording Secretary

Chairwoman Claire called the meeting to order at 7:00 pm. She stated that alternate Jeff Roach would sit in Ed Miner's absence in the case of a vote. The Board members agreed to move the review of the 8/26/09 meeting minutes to the end of the agenda in order to expedite another discussion that audience members were in attendance to hear.

Board Discussion:

a. To discuss building permit applications for Lot 741, Bowers Road, access from a private easement

Mark Fougere, Town Planner, stated that a building permit application has been received for Lot 741 off of Bowers Road. Bowers Road transitions into an old Class VI road; history reveals that the Town had abandoned this as a Town road in 1895. Mr. Fougere stated that RSA 674.41 provides options for situations like this. He read the following section of RSA 674.41 aloud: "(3) *Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds; or (d) Is a private road, provided that: (1) The local governing body, after review and comment by the Planning Board, has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof; and (2) The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and (3) Prior to the issuance of a building permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought...*" Mr. Fougere stated that it has been the policy to allow for building permits in other cases.

An Agreement and Release document has been provided from the Town Attorney which can be amended for a private road. This document would have to be signed by the property owner and the Board of Selectmen and would then be recorded in the registry showing that it is not a Town road. Mr. Fougere stated that the Town Attorney is confident that the agreement is solid and feels that it is the best version for this type of issue. Mr. Fougere stated that there was a dispute a few years ago and two decisions were reached by the court: 1) even though the road was the abutter's, the applicant's rights do not disappear; 2) adverse position claim stands because the previous owners had used the road.

Terry Stamps, Board member, stated that a building permit for a single residence cannot be issued until the agreement is registered. If they were to subdivide the lot, they would have to go to the ZBA. Chairwoman Claire stated that the court has already ruled on this case.

Scott Osgood, Board member, stated that this appears to be a somewhat adversarial case between the landowners. Private roads are built to provide access to this land, and the Town regulations do not allow building on private road. He stated that this is not the way that the Planning Board typically does business regarding private roads. He asked what protection is in place to stop the owners from blocking the road. He stated that there should be some sort of guaranty to someone building a house that they will have access to their property.

Ron Taylor, Selectman ex-officio, stated that the Board of Selectman will address this when it comes before that board.

Chairwoman Claire stated that building permits have been issued on Class VI and private roads in the past.

Mr. Fougere stated that the agreement is between the landowner and the Board of Selectmen.

Rick Patenaude, Board member, stated that the one building the house is responsible for what will basically become the driveway to his property. Mr. Osgood stated that this long driveway is on someone else's land, and he asked what will prevent any mischief from happening when the building permit is issued. Mr. Patenaude stated that if he has the right to access, then it should be considered as a driveway.

Leon Parker asked how many permits have been issued in situations like this.

Mr. Fougere stated that the assessor said there were five or six permits issued not that long ago.

Chairwoman Claire stated that the process is in place, and she strongly recommends that the agreement is recorded for this specific lot. This verifies the agreement between parties, and the Board does not have to make comment on the building permit.

Mr. Parker stated that there is a case where a building permit was issued on a Class VI road, and now one of the people has become sick and wants the Town to be responsible for fixing the road so that emergency assistance can reach him. The plea is always on a humanitarian basis, even though all parties were fully aware and understood the risk involved in building on a Class VI road.

Mr. Taylor stated that the Town can provide emergency repair on a Class VI road if it goes through the right procedure, but routine maintenance is not provided by the Town.

Mr. Patenaude asked why the Board has to even consider it reasonable to restrict the use of someone's land just because someone has made an unreasonable plea. He stated that

he understands the purpose of zoning regulations, but it is impossible to make a law that encompasses every situation.

Chairwoman Claire suggested that the minutes of this discussion be submitted to the Board of Selectmen for their review. She stated that she feels strongly about having the agreement in place. The Board members agreed with this recommendation.

Ms. Stamps stated that she feels that the Agreement and Release document is necessary and meets the provisions of the RSA. She also suggested that the Board of Selectmen check the requests for building permits on Class VI roads.

Ed Miner, Vice Chairman, arrived at 7:29 pm.

August 26, 2009 Meeting Minutes

Minutes of the August 26, 2009 meeting were reviewed and corrected. Terry Stamps **MOVED** to approve the minutes as amended; Kellie Dyjak **SECONDED** the motion. Motion to approve minutes **PASSED UNANIMOUSLY**.

Member Binder Update: New contact lists were provided to Board members.

Miscellaneous

a. Thomas Howard was introduced as a new Alternate member of the Planning Board. He stated that he was sworn into office this afternoon. Chairwoman Claire explained that the alternates will rotate sitting on the Board in a voting capacity. However, once an alternate is involved in a case, he will sit for the duration of that case.

b. Conservation Commission Update: Terry Stamps stated that the Conservation Commission is involved in a review of a proposed road on an old Class VI road. She reported that members of the Conservation Commission did a site walk on Lot 98 which is owned by the Town. She stated that they looked at Lot 98 to get a better understanding of the attributes of the property. She stated that she did not attend the site walk but did attend the meeting afterwards where it was discussed. Those on the site walk entered the property from Rte. 114 and walked south to Lot 102. She stated that a road has already been constructed at the stone wall boundary line. She reported that the gravel road is 50' to 60' wide. She stated that the Conservation Commission is not making any comments or recommendations until they receive comments from Town Counsel.

b. Transportation Advisory Committee Update: Scott Osgood stated that applicants from several NH towns have applied for State money. The committee reviewed the applications, and all applicants were accepted for the next level of the review process.

Adjournment

Terry Stamps **MOVED** to adjourn at 7:41 pm; Kellie Dyjak **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Respectfully submitted,
Jennifer Astholz

