

**TOWN OF HENNIKER
PLANNING BOARD**

February 11, 2009

Approved Minutes

Call to Order/Attendance

Members Present: Gary Guzouskas, Vice-Chairman; Kellie Dyjak; Scott Osgood; Terry Stamps; Ron Taylor, Selectman, ex-officio; Edward Miner, Alternate; Leon Parker, Alternate Selectman, ex-officio

Others Present: Laura Scott, Town Planning Consultant; Jennifer Astholz, Recording Secretary; Mike Vignale, Town Engineer; Jeff Roach; Jennifer McCourt; Thomas Patenaude; Ken Davis ; John Nachilly ; George Fredette

Members Excused: Jim McElroy and Kristin Claire.

Mr. Guzouskas called the meeting to order at 7:00 pm. He will be acting Chair for this meeting. It was noted the Mr. Miner will be voting in Mr. McElroy's absence.

Mr. Guzouskas requested, with the Board's approval, that the agenda be re-ordered so that the minutes of the January 14, 2009 meeting could be reviewed first. The Board members agreed to this request.

January 14, 2009 Meeting Minutes – Review and Approve

While discussing page 3 of the minutes, Ms. Stamps asked for definition of "structure" to be clarified in regards to the building setback requirement. She stated that she did not dispute the conversation that took place as recorded in the minutes, but felt that there was still some confusion with the definition. There was some discussion, and then Ms. Stamps suggested coming back to this issue later since it is not really relevant to approving the minutes.

Mr. Guzouskas pointed out that the Excavation Application for Case #2008-011 was accepted as complete at the January 14, 2009 meeting. He stated that it was decided that Ms. Scott would provide a memo of outstanding items to the applicant. The Board indicated that the summary of discussion about that case was accurately recorded in the minutes. Mr. Guzouskas stated that that was his primary intent in reviewing the minutes before the public hearing tonight; he suggested completing the review of the minutes after the public hearings. The Board agreed to his suggestion.

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.

Ms. Scott reviewed the materials regarding this case. She noted that the DES Wetlands Permit is needed and additional escrow funds are required to be deposited into the account. The applicant is aware of these requirements.

Jennifer McCourt pointed out a correction in the notice to properly read “Mink Hills Land, LLC.

Ms. McCourt directed the Board members to her memo dated 12/24/08, page 2, #2b, which she explained how the conditions of section 201-8 of the Earth Moving Regulations would be met. She stated that the reclamation plan coincides with the 2:1 slope of the excavation plan. She stated that there may still be small areas of 1:1 slope, but the plans have been revised and that there are no issues with a large excavated face. She stated that the bond restoration estimate is shown to be at 1:1 slope, which needs to be laid back to a 2:1 slope. Ms. McCourt stated that quarrying follows veins and mine safety experts enforce the requirements. She stated that with the new plan, the bond could be significantly reduced to a much lower level than what is proposed by the Town Engineer.

Mike Vignale, Town Engineer, stated that he reviewed the estimate at the last meeting and there are no restrictions on the plans. He stated that the Town must look at the worst-case scenario for purposes of determining the bond. He stated that he was not inclined to recommend reducing the amount of the bond needed to cover a 650’ long excavation at a 2:1 slope, without additional controls in place. He stated that he could envision a ledge face that may have to be reclaimed by the Town. He stated that he believed there will be some ledge face to deal with.

Mr. Taylor asked Ms. McCourt to explain the applicant’s reclamation plan again. Ms. McCourt showed on the plans a planned 2:1 slope. She stated that there will be vertical faces in areas but not all at once as it will be reclaimed as the work progresses. She stated that they are trying to get to a more reasonable bond, as the one proposed by Mr. Vignale makes the project unfeasible, as it will be carried over 30-40 years. She stated that different parameters must be used for excavation bonds than when one is designing a subdivision.

Mr. Taylor asked what protection the Town would have in a worst-case scenario. He stated that a \$20,000 bond, as proposed by the applicant, does not seem high enough.

Mr. Vignale stated that it sounds like phasing the project to excavate and then get it ready to reclaim before moving to the next phase would be a good option to allow for a reduced bond amount.

Ms. Stamps asked how phasing would occur.

Ms. McCourt stated that the majority of the project is planned at a 2:1 slope. Using Mr. Vignale’s numbers, she came up with a \$20,000 bond. Mr. Vignale respectfully disagreed with her assessment.

Ms. McCourt explained the work will be shifting around the site, as it is not standard practice to work the entire site all at once. The applicant will excavate it back to 2:1 slope if that is what is

needed. She stated that a bond of \$203,900 is much too large to carry for approximately 30 years.

Ms. Stamps stated that she would be more comfortable with the Town Engineer's estimate. She stated that this is an important enough item to not rush through the process of making a decision. She suggested that the applicant needs a chance to work out an estimate with the Town Engineer. She suggested that better understanding is needed between them. She stated that it is nothing personal, but as the Planning Board, they have to ensure that sufficient money is available to provide for the proper reclamation of the site for the Town, if necessary.

Mr. Miner stated that more work needs to be done on the bond amount and parameters before the Board can make a decision. He stated that he understands both sides of the argument as he has worked as a Town Engineer during his career.

Mr. Osgood stated that he has no further comments to add to the situation.

Mr. Taylor suggested that the permitting process may act as a stop-gap to tie the permitting and bond issues together.

Ms. McCourt stated that Mr. Vignale's comments appear to be fundamentally opposed to the applicant's plans. She stated that Mr. Taylor had a good idea to work on a 3-year permitting period. She stated that a huge ledge face would not occur within three years.

Mr. Vignale stated that he does not believe that a \$20,000 bond would work even in smaller phases. The bond could be reduced dramatically if they change the basic operational procedures of the excavation. The only way to reduce the bond amount is to segment the project.

Ms. Scott stated that the permitting requirement is every two years, per the Town Regulations. She stated that it could be a way to monitor the bonding process. If the applicant wanted to make a smaller bond, there may be a way to tie it to the permitting process. Ms. Scott also stated that she and the Town Engineer offered to meet with the applicant to discuss this issue, but the applicant chose to forego that option and discuss the issue at the Planning Board meeting. She stated that the suggested bond numbers vary greatly and the Board must decide how they will regulate the process if the bond is tied to permitting.

Ms. Stamps reiterated that they need something that the Board feels is reasonable to protect the Town. She recommended that the applicant and Town engineer meet together and come back with a plan that meets the Board's criteria.

Mr. Osgood stated that there are other options that would bring the two sides together. He suggested that they pursue creative options other than just the cash bond process. He stated that phasing is a way to accomplish their goals.

In support of Mr. Vignale's previous statement, Ms. Stamps stated that approval of the current plan by the Planning Board would allow the site to potentially be excavated in away where, with no phasing, the applicants suggested bond is not sufficient.

Ms. Dyjak stated that the whole site needs to be considered to be reclaimed, not just Phase 1 of the project.

Mr. Miner stated that as much as he would like to agree with Ms. McCourt's idea, he would have to vote in favor of the Town Engineer's plan at this time. With the current plans, that is the only sure way to protect the Town.

Mr. Guzouskas asked Mr. Miner his opinion about linking the permitting phases with the bond. Mr. Miner stated that it is a possibility, but it has not been presented yet. Mr. Guzouskas stated that he believes that the Town Engineer and the applicant will come to a solution more quickly by meeting together.

Ms. Stamps stated that she will expect to see what the new plan is, how it will work and how much it will cost.

Ms. McCourt then addressed how the conditions listed in Chapter 201-8 are satisfied. She provided this written information to the Board in her memo dated 12/24/08. The requirements of Chapter 201-8 and the responses provided by the applicant were read aloud.

Kellie Dyjak asked about storage of petroleum products on the site (M). She stated that the fuel tank of a bucket loader qualifies as a hazardous spill if something happens to it. Ms. Scott said that the intent of the requirement relates to the storage of actual fuel tanks, not fuel in machinery. Fuel will be brought in as needed and removed by the end of each workday.

Mr. Guzouskas stated that there is inherent difficulty because of the nature of the business. He stated that the parameters must be set so that there is a record of how the phasing will work in light of the entire process. Ms. McCourt stated that two years is a great time to be able to evaluate the process.

Mr. Guzouskas stated that his charge to the applicant is to include how to make the phasing and bonding process realistic and operational so it is not a burden to the business owner yet still protects the Town. He wants them reach a solution that makes sense to both sides.

Mr. Taylor **MOVED** to continue the public hearing for Case #2008-011 to the next regular meeting of the Planning Board on March 11, 2009. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 6-0.**

At 8:10pm Mr. Guzouskas declared a short recess to allow the applicant and Town Engineer to schedule a meeting together. The meeting reconvened at 8:15 pm.

New Public Hearings

Case 2009 Minor Subdivision Application

Map 1 Lot 102 located at 196 Bradford Road (Route 114) in the Medium Commercial (CM) Zoning District. The applicant, Jennifer McCourt on behalf of Patenaude Properties, is proposing a minor 2-lot subdivision to separate the existing house and associated facilities (proposed 2.82 acres) from the remainder of the parcel (proposed 32.87 acres).

Laura Scott reviewed the materials in the Board's packet. She stated that the Fire & Rescue Department's comments have no bearing on this specific subdivision application but they did want their concerns included for the record. Ms. McCourt distributed new copies of the requests for waivers from Sections 202-9J and 202-9N that show the correct lot numbers.

Ms. McCourt stated that there is enough frontage on both parcels of land, and buildable areas were shown. She stated that DES approved the septic design. Driveways were shown for both parcels. Ms. McCourt showed the surveyor's topography maps, which delineate the two-acre buildable area for each lot.

Mr. Miner asked if there were any aerial views of this area. Ms. McCourt stated that none were available.

Mr. Guzouskas asked if there were any comments from the public about the requested waivers. Hearing no comments, the request from Section 202-9J was reviewed and discussed. Ms. McCourt stated that requiring topos for the entire 30-acre parcel is not useful as they can demonstrate the required two-acre buildable area. She stated that the land is commercially zoned and they do not know what its future use may be. She stated that meeting this requirement would pose a hardship to the applicant.

Mr. Taylor **MOVED** to grant the waiver as requested from Section 202-9J. Mr. Osgood **SECONDED** the motion. Motion **PASSED, 6-0.**

Ms. McCourt reviewed the details of the request for a waiver from Section 202-9N for the larger lot. She stated that they will be able to find a spot on the 30 acres to show proposed sewage disposal systems and wells. She stated that they have wetlands mapping on the entire site.

Mr. Osgood **MOVED** to grant the waiver requested from Section 202-9N. Ms. Stamps **SECONDED** the motion. Motion **PASSED, 6-0.**

Ms. Stamps raised a question about the lack of a professional signature and proper recording of documents on one of the referenced plans. Ms. McCourt stated that was a secondary piece of information that had formerly been used for a Current Use plan. She stated that there are no questionable areas on the boundary lines, and these plans are properly signed and stamped.

Mr. Miner asked about a man-made pond on the plans. Ms. McCourt stated that that is an existing pond not proposed.

Mr. Taylor **MOVED** to accept the application for Case #2009-001 as complete. Mr. Osgood **SECONDED** the motion. Mr. Guzouskas opened the public hearing at 8:35 pm. Hearing no comments from the public, the public hearing was closed.

Ms. Stamps commented on the Conservation Commission's memo regarding the waiver requests. Ms. Scott stated that she did send all pertinent information to the Conservation Commission, but perhaps they were lost.

Ms. Scott suggested adding the conditions that the plans be revised to show that the requested waivers were granted and to show the topo of the buildable area as presented at the meeting.

Mr. Taylor **MOVED** to approve the application for Case 2009-001 with the conditions that the plans be revised to show that the requested waivers from Sections 202-9J and 202-9N were granted and that the topo of the buildable area be shown on the plans as presented at the meeting. Ms. Dyjak **SECONDED** the motion. Motion **PASSED, 6-0**.

Case 2009-002 Site Plan Review Waiver Request

Map 1 Lot 591 located at 686 Flanders Road (Pat's Peak) in the Commercial Recreational (CR) Zoning District. The applicant, George Fredette of SFC Engineering Partnership, Inc. on behalf of Pat's Peak Ski Area, Inc., is requesting a waiver from the provisions of the Zoning Ordinance and Site Plan Review Regulations per NH RSA 674:30 to construct a 130' communications tower and 10'x20' equipment shelter. The proposed tower is for Public Service Company of New Hampshire (PSNH) intra-company communications. This application is being noticed as a Development of Regional Impact per NH RSA 36:54- 36:57.

Ms. Scott reviewed the information that was provided to the Board. She stated that the abutter list was corrected. Ms. Scott also stated that Mick Costello was acting in the position of Code Enforcement Officer (not as a Fire Dept. representative) when submitting his comment on 1/30/09. Ms. Scott stated that only public utility structures are eligible for this exemption under State and Town regulations. If denied, the applicant may appeal to the Public Utilities Commission.

George Fredette, SFC Engineering, stated that PSNH is a tenant on one of the towers on Pat's Peak. He explained that this proposed project is to install a new radio system throughout the State and will be used for intra-company function. This system will allow for remote control of electronic circuitry and would support the company's means of communication with their personnel. He stated that future technology includes advancements such as digital meter reading as PSNH strives to improve operations to their clients. He stated that this is a statewide network to provide better service to its customers.

Mr. Fredette stated that the highest tower currently on Pat's Peak is 160' tall. He stated that their proposed tower is 130' from the same base height as the 160' tower. He stated that public utilities are exempt from the requirement governing personal service wire facility towers. He stated that RSA 674:30 states that the Planning Board may waive the zoning and site plan regulations, and this would be appropriate action under this RSA provision.

Mr. Fredette stated that there would be a cable that runs from the building to the tower. The existing generator will be rewired to the new building.

Ms. Stamps asked about the current tower. Mr. Fredette stated that the current tower will remain standing; PSNH is a tenant on that other tower.

Mr. Miner asked if any other entities would be using the new tower. Ken Davis, PSNH IT Telecom Engineering, stated that there were no plans for that to happen at this time. Ms. Scott explained that no other tenants could use that tower. Although, fire and mutual aid sometimes may share the tower. It was suggested that a note be added to the plans stating that no other tenants may share the tower unless they meet the waiver requirements of RSA 674:30.

Mr. Davis stated that a tower under 200' tall does not require lighting. The proposed tower is 130' tall with an additional 20' tall antenna attached. Mr. Davis stated that a propane tank will be used. The Pat's Peak staff works with them to transport propane on snow machines if necessary in an emergency.

Ms. Stamps asked about noticing the development of regional impact. Ms. Scott stated that plans were sent to Hopkinton, Weare, Hillsborough, and CNHRPC, but none have made comment.

Mr. Davis explained how these systems could be helpful during power outages. He stated that there are about 12 of them currently in the State.

There was discussion about the necessity of doing the Site Plan Review in order to consider the waiver.

Mr. Fredette stated that their proposed tower is shorter than the other existing towers. He stated that there are no abutters present at the meeting voicing any concern about the project. He stated that he believes that they meet the criteria for a waiver on both State (RSA) and local levels (Site Plan Review Waiver Criteria and PWSF Ordinance). Mr. Fredette stated that this operation would create no interference with any other radio frequencies. John Nachilly from PSNH stated that they must meet strict FCC guidelines and proper licensing for any radio emissions.

Mr. Guzouskas opened the public hearing at 9:10 pm. There was no public comment, and the hearing was closed.

Mr. Miner **MOVED** that the Site Plan Waiver Request for Case #2009-002 to waive requirements in RSA 674:30(i) be granted with the following conditions: 1) an additional \$180 is owed to the Town for abutter notification; 2) Revise Plan Cover Sheet: Property Owner and Applicant need to be corrected; Planning Board Approval Box should read "Waiver Request per NH RSA 674:30 approved by Henniker Planning Board"; 3) Revise Plan Sheet 2, Note #4 is incorrect; the abutter list is incorrect/incomplete (but was noticed correctly); 4) a note is to be added to the Plans that no other tenants may have space on the tower unless they meet the waiver

requirements listed in RSA 674:30. Ms. Dyjak **SECONDED** the motion. Motion to grant the waiver **PASSED, 6-0.**

January 14, 2009 Meeting Minutes – Review and Approve (continued from earlier)

The Board resumed review and correction of the January 14, 2009 meeting minutes. Ms. Scott stated that she will ensure that all waiver numbers are correctly referred to throughout the discussion of Case #2008-011 in the minutes.

There was discussion about “structures” and building setbacks. Ms. Stamps stated that she was not intending to change the minutes, but wanted to make sure that the Board members understand that fences do not have to adhere to building setback requirements since fences are not included in the definition of buildings. An incorrect statement was made at the previous meeting that fences would have to meet setback requirements.

Ms. Stamps **MOVED** to approve the minutes as amended. Mr. Osgood **SECONDED** the motion. Motion **PASSED, 5-0-1** (Mr. Miner abstained as he was not in attendance at that meeting.)

Earth Excavation

- ❖ Memo Update
- ❖ Active and Inactive Excavation Locations

Ms. Scott stated that these items will be discussed at the next work session meeting.

Planning Board Fee Revision

Ms. Scott stated that the Board revised the recording fees just a few months ago; however, she is suggesting that they request another revision of fees from the Board of Selectmen. It appears that the fees caused a double-charge for recording through the collection of Planning Board fees and the use of the escrow account. She stated that any of her time spent working directly with a client is billed from the escrow account. Ms. Scott suggested a fee of \$30 per plan sheet; \$25 per document; \$25 LCHIP fee per plan set/document.

Ms. Stamps **MOVED** to submit the recommended fees to the Board of Selectmen. Ms. Dyjak **SECONDED** the motion. Motion **PASSED, 5-1** (Mr. Taylor dissenting).

Member Binder Updated

- ❖ January 2009 Right to Know Law Article (Tab #8)

UNH Community Profile Update

- ❖ April 17-18, 2009 The organizers have requested that someone from the Planning Board be present to give an opening presentation of the project. The Board members suggested that Kristin Claire perform the duty as Chairwoman of the Planning Board.

Member Updates

- ❖ Transportation Advisory Committee

Scott Osgood stated that the last meeting was very well attended. There appears to be increased attention on bicyclists and bicycle safety. He stated that creative problem-solving ideas for transportation issues are being heard. For example, he stated that a guaranteed car pooling system is being discussed.

Adjournment

Terry Stamps **MOVED** to adjourn at 9:40 pm. Kellie Dyjak **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Respectfully submitted,
Jennifer Astholz