

**TOWN OF HENNIKER
PLANNING BOARD**

Approved Minutes
January 14, 2009

Members Present: Kristin Claire, Chairperson; Gary Guzouskas, Vice-Chairperson; Terry Stamps; Jim McElroy; Scott Osgood; Kellie Dyjak; Ron Taylor, Selectman, ex-officio; Leon Parker, Alternate Selectman, ex-officio

Members Absent: Edward Miner, Alternate

Others Present: Laura Scott, Town Planning Consultant; Dr. Roger Belson; Jennifer Astholz, Recording Clerk

Chairperson Claire called the meeting to order at 7:00 pm.

2009 Town Meeting Warrant Article Public Hearings

Manufactured Housing. Amend §133-98 to delete reference to manufactured housing park subdivisions.

Chairperson Claire stated that this is a new hearing on this amendment to consider a minor revision that was overlooked previously. The public hearing was opened at 7:01 pm. Hearing no public comment, the hearing was closed.

Ron Taylor **MOVED** to forward this item to the Town Meeting ballot. Jim McElroy **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (7-0)**.

Educational District. Amend §133-33A to remove “Fraternities” and “Sororities” from Permitted Use and add “Fraternity House” and “Sorority House” to Allowed by Special Exception.

Mr. Taylor explained that a change was made to clarify that fraternity and sorority houses would be allowed by special exception. The public hearing was opened at 7:02 pm. Hearing no public comment, the hearing was closed.

Ron Taylor **MOVED** to forward this item to the Town Meeting ballot. Jim McElroy **SECONDED** the motion. Motion **PASSED UNANIMOUSLY (7-0)**.

Article XI Signs. Amend §133-43, §133-44A, §133-44C, §133-44D, §133-44E, §133-44F, §133-44K, §133-44L, and §133-46A to clarify the intent of the Sections; Amend §133-44G to define sign maintenance; Delete current language in §133-44H and replace it with language exempting government-sponsored signs from the provisions of the Article; Amend §133-44I to allow signs to project over a public way or sidewalk, remove provision for sign setbacks from property boundaries, and allow the Planning Board to require a sign setback; Delete provision

from §133-44 J that gives the Board of Selectmen waiver authority for sign height; Add §133-44M to discuss provisions of sign framework; Add §133-44N to list exemptions to the Article; Add §133-44O to define “business” as used in this Article; Delete §133-45A and insert language for “Attached Business Signs”; Delete §133-45B; Amend §133-45C to renumber it to §133-45B, describe the freestanding signs allowed for single businesses, multiple businesses, and non-fixed location businesses; Renumber §133-45D to §133-45C; Renumber §133-45E to §133-45D, add language regarding flag and banners and how they are regulated, and amend how portable/seasonal /temporary signs are regulated and for how long; Add §133-45E regarding how temporary signs in Proctor Square traffic triangle are regulated; Add §133-45F regarding how temporary signs placed behind windows that are visible by the public are regulated; Amend §133-46 to add size requirements for CR1, delete “multiple business listings”, add language for Proctor Square Temporary Sign; Add §133-46A and §133-46B to regulate how Attached Business Signs and Freestanding Signs are measured; Amend §133-46B to increase the sign of temporary signs for the sale/rental of property/buildings; and Add §133-46D that exempts portable/seasonal/temporary signs from requiring a permit.

Kellie Dyjak stated that she still has a problem with the wording about internally lit signs in Section 133-44 D. She suggested replacing the wording with “digital displays.” Ms. Claire stated there might be other things, besides time/temperature, that can be digitally displayed, that the Town would not want. The Board decided to leave the wording as written.

Chairperson Claire opened the public hearing at 7:05 pm. Dr. Belson stated that he had emailed a few suggested changes to Ms. Scott (copies were in the Board’s materials for review.) The suggested changes were mainly to correct typographical errors or to add clarity to a section.

Gary Guzouskas expressed his appreciation to Dr. Belson for the work he had done on this amendment. He stated that the end result is a version that is much easier to read and understand.

In response to concerns raised about the complexity of this amendment, Ms. Scott stated that the actual wording for all of the Zoning amendments that will go on the ballot would be crafted at the next Planning Board meeting.

The public hearing was closed at 7:11 pm.

Mr. Guzouskas **MOVED** to forward the Article XI Signs amendment as edited to the Town Meeting ballot. Jim McElroy **SECONDED** the motion. Motion **PASSED UNANIMOUSLY, (7-0).**

Structure. Amend Article II Definitions to exempt all fences from the definition of “structure”. This has been submitted as a petition warrant article.

Ron Taylor recused himself from this hearing. Leon Parker, Alternate Selectman, ex-officio, will be voting in his place.

Ron Taylor presented this petition warrant article, which exempts all fences from the definition of “structure.” He stated that the Board of Selectmen has a process in place for the Fire Department to inspect fences. He stated that the Town ordinance was in conflict with the zoning ordinance and this change brings them back in line with each other.

Ms. Scott stated that the Board cannot alter the proposed language but can decide whether or not to support this warrant article.

Chairperson Claire opened the public hearing at 7:19 pm. Dr. Belson asked about setbacks if a fence is not considered a structure. Mr. Taylor explained that if a fence were taller than 3 feet, it would be considered a structure and would have to follow setback requirements.

Jim McElroy **MOVED** for the Planning Board to support this petition warrant article. Gary Guzouskas **SECONDED** the motion. Motion **PASSED UNANIMOUSLY 7-0**.

Mr. Taylor rejoined the Board at this time.

As the continued public hearing was not noticed to begin until 8:00 pm, the Board continued with their other agenda items.

December 22, 2008 Meeting Minutes – Review and Approve

The minutes of the December 22, 2008 meeting were reviewed and corrected. Terry Stamps **MOVED** to approve the minutes as amended. Kellie Dyjak **SECONDED** the motion. Motion **PASSED, 6-0-1**. Mr. McElroy abstained, as he was not in attendance at that meeting.

2009 Growth Management Ordinance Annual Building Permit Limitation

The Board members discussed the calculation of the number of building permits available each year. A total of 145 building permits are available for 2009.

Mr. Guzouskas **MOVED** to approve the Growth Management Ordinance calculations. Ms. Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY 7-0**.

Draft 2009 Work List – Review and Amend

Ms. Scott drafted a list of items that the Board had mentioned working on throughout the year. She asked the Board to give feedback on this list and add/remove any items, as they felt necessary.

Mr. McElroy stated that the process for addressing the Class VI to Class V road upgrades should be addressed this year. Mr. Guzouskas asked if the road upgrade process (#8) and the road acceptance procedure/process (#9) could be worked on concurrently with (#11) joint meeting with other Boards, Committees, and Town Staff.

Ms. Claire stated that the Board must address the maximum road length for cul-de-sac.

Ms. Stamps stated that the Subdivision Regulations need to be completed. Mr. McElroy stated that completing the Subdivision Regulations and Site Plan review Regulations are of utmost importance.

Ms. Scott stated that there is a new RSA which affects the Rules of Procedure. She also stated that the Excavation Regulations have been rewritten and currently being reviewed by the Town Engineer and the Conservation Commission.

Mr. Taylor stated that Home Business Regulations should be reviewed, as the current regulations are difficult to understand.

Ms. Claire stated that she feels strongly about wetlands setbacks.

The Board discussed the implications of the Education District and various approaches to amending zoning.

Ms. Scott stated that items #6 Review of Active Excavation Operations for compliance, #3 Rules of Procedure and #5 Excavation Regulations will be ready to review soon. It was the consensus of the Board for Ms. Scott to proactively work on #1 Subdivision Regulations, #2 Site Plan Review Regulations, #8 Class VI to Class V Road Upgrade Process and #9 Road Acceptance Procedure/ Process. The Board decided to review 2010 Zoning items this summer.

Excavation Annual Inspection Form – Review and Adopt

The Board reviewed a new form that Ms. Scott created. All applicable information can now be posted on this form rather than having to review an entire file. Ms. Scott will incorporate a few suggested changes to the form, such as adding a person's title to the signature line, adding a space for the date on top of the form and allowing more space to write.

Mr. Taylor **MOVED** to adopt the annual excavation inspection form as edited. Ms. Dyjak **SECONDED** the motion. Motion **PASSED UNANIMOUSLY 7-0.**

Member Binder Updated 2008 Budget & Proposed 2009 Budget (Tab #3)

Ms. Scott provided the Board members with updated information to be kept in their binders.

8pm Continued Public Hearing

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, LLC, is proposing a commercial excavation operation on Lot 99 with access through Lot 44 to NH 114.

Mike Vignale from KV Partners, Town Engineer, was present to personally address issues outlined in his memo of 12/23/08. Jennifer McCourt asked to present first to help answer these questions.

Ms. McCourt enlarged photographs that were taken before the snow to give a feel for the site. The Board was not able to go on the site walk due to inclement weather. Ms. McCourt showed aerial views of the area. Topography from 1986 was used in developing the plans. She showed the areas graded with 5' contours. The first wetlands impact is in the front of the lot, shown on photo #1. She showed where the culvert is crossed on Photo 2. Regional vegetation is also shown in the photos. Photos 3 & 4 show banking and rock structures as well, and the second wetlands area is evident. Photo 5 was done for the State Historical District to show the large boulders. Ms. McCourt showed the area on the plans where the road was widened. One area was used as a log landing. She stated that the road has mainly a 10% grade. They want to get the road to its previous level of use. Henniker Crushed Stone employees will be using the road; no other subcontractors will be using it. It will be upgraded to the point where the trucks and employees' vehicles can get back there. The applicant has been in this business for a long time and knows what is needed for safe operation.

Ms. McCourt presented the Board with a reclamation cost estimate. She noted that this came up a little under \$15,000 that was quoted previously.

Ms. Claire stated that she would like to hear from Mr. Vignale, Town Engineer, who provided his review in a memo dated 12/23/08.

Mr. Vignale stated that he is concerned about two-way vehicle passage along the access road, mainly for emergency accessibility. Ms. Scott said that the Fire Department has written that the access widths for the gravel pit are sufficient at this time.

Mr. Vignale stated that he has concern about the planned diversion ditch on top of the slope. It is his opinion that the space is too tight, and he would like to see a few more feet added.

Ms. McCourt asked to address these issues. Ms. Claire stated that they will continue with the Town Engineer's comments and then will allow time for the applicant to comment.

Ms. Stamps stated that she would like the statement of 10% maximum grade for the access road stated on the plans.

Mr. McElroy asked for further explanation of the berm issue stated in item #2 of Mr. Vignale's memo. Ms. McCourt showed the berm at the top of the cut and the detailed plans for it. Mr. Vignale suggested moving it back a few feet to decrease chance of breaking through. Ms. McCourt stated that she could add to it to make it wider.

Mr. Vignale stated that the applicant would have to manage the water to keep it from ponding. He stated that they don't know what they will be in for until they start doing the excavation work. He understands that a waiver has been requested under Chapter 201-5.

There was some discussion about the Town wanting to have some say in how the ground water control will be managed.

Ms. Claire found some references in the RSA's regarding protecting water resources. Mr. Vignale said that every detail cannot be planned until the work is begun.

Mr. Guzouskas asked if there are standards prescribed to by a professional organization or governing body to regulate this besides the State. Ms. McCourt stated that they use best management practices for Alteration of Terrain. These plans have been approved by DES for the Alteration of Terrain permit. Rodney Patenaude stated that they deal with the Division of Mining and Safety. The best management practices of ledge management will be cited.

Mr. Guzouskas asked if they could document the reference. Ms. McCourt stated that she would add a note that they will use best management practices according to the proper agency.

Test pits are shown on the plan. Ms. McCourt stated that they have shown test pits that meet this requirement. They are asking for a waiver for doing the test pits at 4' below the planned excavation level. Ms. Stamps asked if this site is not in an aquifer or recharge area.

Ms McCourt stated that there was a lot of discussion at the last meeting about the waiver request from Section 201-8G. Ms. Stamps asked how Section 201-8G is applicable to this plan.

Ms. Claire asked to finish reviewing all of the comments before discussing the waiver requests.

Mr. Vignale requested a written construction cost estimate detailing the total costs of the restorations. An estimate has been provided and the engineer will review it and provide feedback to the Board. A note will be added to the plan that loam will remain on the site.

Ms. Claire asked to address the waivers next as they are an important issue.

Ms. McCourt stated that previous meeting minutes show that Ed Miner said it's not in an aquifer district, so the waiver for 201-8(G) is not required.

The waiver from Section 201-6(A)(2)(g) was discussed. Ms. McCourt gave overview of the proposal at Mr. McElroy's request. She showed where the test pits were done, but they did not go below the bottom of the excavation. Mr. Vignale stated that he is not sure that doing this would give any worthwhile information. Mr. McElroy asked if the concern would be if they ran into an underground stream while excavating. Ms. Claire stated that the applicant know that it is granite ledge in that area.

Mr. Vignale asked how far down it is before you hit a ledge face? Ms. McCourt stated that it is 6'-10' down. She stated that they had a large piece of equipment digging the test pits. Rodney Patenaude stated that they know it is ledge or they wouldn't be going through the expense of this operation.

They found that the seasonal high water table (SHWT) is 3 – 3 ½ feet. The slope of site causes you to go into the seasonal high water table. There was discussion about building a sediment

pond and swale to mitigate the water. Ms. Dyjak stated that the SHWT is not typical groundwater. Features have to be sized to handle water mitigation.

Ms. McCourt stated that as they cut into the ledge, the SHWT would be lowered. The water table will follow the contours and the SHWT will readjust itself. Septic can be put on glacial till. Diversion ditches are put on top to limit flow.

Mr. McElroy stated that he does not see how granting this waiver request (201-5(F)) would do any harm.

Mr. Guzouskas stated that he would like to make a motion to grant this waiver from 201-5F. The motion was not seconded. Ms. Stamps asked Ms. McCourt to make a simple drawing of her explanation of the SHWT adjusting itself to the excavation. Mr. Guzouskas stated that Rodney Patenaude said that they have done enough work and know what they are doing in this area, and he feels confident that it is granite ledge.

Scott Osgood stated that the regulations are written for gravel excavations; dealing with ledge is a different situation.

Ms. Claire read from RSA 155-E(11) which puts the charge on the Board to protect the Town's water resources.

Mr. Osgood stated that the SHWT would drop when excavation work is done. If you lived up there and had a well, you would be adversely affected; however, there is only wilderness surrounding the site.

The waiver request from Section 201-8G to allow quarry of stone below the soil seasonal water table was discussed. It was noted that this requirement specifically applies to aquifers and recharge area. A hydro study was done, and the area is comprised mainly of glacial till and is not a recharge area. Ms. Stamps asked to review a copy of the Natural Resource Survey that had been done.

Section 201-6.A.2(g) requiring test pits or borings 4' below planned excavation was discussed. The applicant has provided the average groundwater table data. Mr. Vignale stated that he does not think there is any value to drilling 25' into the ledge.

Mr. Guzouskas **MOVED** to grant the waivers as requested from Excavation Regulations 201-5(F) and 201-8(G). Mr. McElroy **SECONDED** the motion. Motion **PASSED, 6-1.**

Mr. Guzouskas, Ms. Stamps, Mr. McElroy, Mr. Osgood, Ms. Dyjak and Mr. Taylor voted in favor; Ms. Claire dissented.

Mr. Guzouskas **MOVED** to grant the waiver from Excavation Regulations 201-6.A.2(g). Mr. McElroy **SECONDED** the motion. Motion **PASSED UNANIMOUSLY 7-0.**

Chairperson Claire called for a recess at 9:15 pm. The Board reconvened at 9:23 pm.

Chairperson Claire instructed the Board to consider the application for completeness. Ms. Scott reviewed her memo dated 12/16/08. Ms. McCourt has asked for a single embedded culvert instead of two of them. She stated that they anticipate getting the wetlands permit within 30 days. Ms. McCourt's memo of 12/24/08 has addressed the other questions. The estimate for restoration has been provided.

Ms. Stamps asked if there is a note on the plan about what can or cannot be done on Lot 44. She asked what recourse there would be if something happened to Lot 44 eliminating the visible barrier to the excavation site. She asked if something needed to be noted to ensure that the excavation will not be visible over time. Ms. McCourt stated that she did not think that it was feasible to address the movement of a mountain. Ms. Scott stated that Lot 44 is not part of the application.

It was the consensus of the Board that requirements of 201-6A(3)(e) & (f) have been satisfied.

Mr. Osgood reminded the Board that the wetlands permit has not yet been received.

Mr. Guzouskas **MOVED** that the Board accept application 2008-011 for Mink Hills Land, LLC, as complete. Mr. McElroy **SECONDED** the motion. Motion for completeness **PASSED UNANIMOUSLY 7-0**.

Ms. Scott stated that it would be helpful to the applicant for the Board to let them know what is still needed.

Ms. McCourt asked to respond to Mr. Vignale's memo of 12/23/08.

Regarding the road widening, Ms. McCourt stated that there is an area of 100' - 150' long where the road is 12' wide and then could be widened back out to 16'. She stated that widening the road to 16' past that point wouldn't be too hard to do. She stated that there is a good straight piece of road with good sight distance. The Fire Department does not have a problem with the area of 12' width. There is an 80' length of road at a 13% grade; however, most of the road is at a 10% grade. This is private property, so they are doing this mainly at their own risk. There is a large log landing area that can be used as a pull off, if necessary. Widening the road would be very damaging to the area on either side of the road in that specific section.

Mr. Osgood stated that the reclamation estimate should reflect what the Town might have to pay to do the reclamation of the site. Ms. McCourt stated that she got prices from another excavator in Town and went to a professional nursery to get prices on trees and seeds.

The Board deliberated about the width of the road. Mr. Guzouskas stated that he is personally comfortable with the 12' section. Most of the road has good sight distance. He stated that he believes that the applicant is making good plans for this area. He stated that he would only have them consider widening the road in places where there is not good sight distance or around a

corner. He stated that the applicant will not want to get into a position of having to back their own work trucks up along the road, and he is confident that they will do the best for the area. Ms. Claire stated that the only area they are not going to widen is where it will be so difficult and destructive to do so. Ms. Stamps asked about truck traffic. They plan on 100 truck trips per day for 8-10 hours per day.

Ms. McCourt stated that about 200' in from Rte. 114 is a stretch of road about 150' long that will remain at 12' wide. The Board stated that they are comfortable with this arrangement.

Concerning a statement of maximum grade, the Town allows 12% for driveways. Ms. McCourt stated that this is an existing access road through that lot. They are willing to widen it, but are planning to work with the existing grade. They are not asking for permission to go steeper than what has already been used there. She stated that it will probably be less than a 13% grade when it is finished, and the general public is not using this road.

Mr. Taylor stated that it is a private road and their private equipment will be using the road. He is certain that it is in their best interest to use best practices to maximize their operation.

Leon Parker stated that it is an existing right-of-way/driveway. Mr. Vignale stated that his only concern is for emergency access. The Fire Department has signed off on the plans. Mr. McElroy stated that this is outside of the Board's purview.

Ron Taylor **MOVED** to not put any notes on the plan about the grade of the access road. Mr. Guzouskas **SECONDED** the motion. The motion **PASSED, 5-2**. Ms. Claire, Mr. McElroy, Mr. Guzouskas, Mr. Taylor and Ms. Dyjak voted in favor; Mr. Osgood and Ms. Stamps dissented.

Ms. Scott will prepare a memo to the applicant stating what is still required.

Mr. McElroy **MOVED** to continue the public hearing to the February 11, 2009 meeting. Ms. Dyjak **SECONDED** the motion. Motion **PASSED, 7-0**.

Adjournment

Mr. McElroy **MOVED** to adjourn at 10:10 pm. Ms. Stamps **SECONDED** the motion. Motion **PASSED UNANIMOUSLY**.

Respectfully submitted,

Jennifer Astholz
Recording Secretary