

RECOMMENDATIONS FOR REVISIONS TO ZONING ORDINANCE WITH NO BUILDING CODE ENFORCEMENT

JANUARY 18 SELECTBOARD MEETING

ARTICLE XIII Administration

133-51 Enforcement by Board of Selectmen. It shall be the duty of the Board of Selectmen, and the Board is hereby authorized, to enforce the provisions of this chapter.

133-52 Permit required; regulations implementing permit system After passage of this chapter, it shall be unlawful to erect or expand any structure or building, to change any use of a structure or building or to relocate any structure or building in any zoned district without first obtaining an appropriate permit from the Board of Selectmen. This permit is to ensure that the proposed construction conforms to the permitted uses in the zone that it will occupy and also that it is located a proper distance from the boundaries of the lot on which it is to be built, and in all other respects conforms to this chapter. The Selectmen shall adopt regulations implementing the permit system. *existing*

133-53 Issuance of permit The Board of Selectmen shall issue the permit requested when such permit is in accordance with the provisions of the chapter or when a special exception has been granted by the Board of Adjustment.

133-54 Injunction or other legal action to enforce chapter Upon any well-founded information that this chapter is being violated, it is the duty of the Board of Selectmen to take immediate steps to enforce the provisions of this chapter by seeking an injunction in Superior Court, or by any other legal action as set forth in RSA 676:17, 676:17-a and 676:17b.

133-55 Permit not required for certain construction. Minor improvements such as painting, cabinetry replacement, sheds of less than 200 sf, replacing windows, doors or interior finishes, landscape improvements, safety and energy system repairs. [Amended Jan 15, 2017, 3-12-1991; 3-13-2001, 3-12-02] ~~To provide all homeowners with an exemption from building permits, building permit fees, building inspections and building permit oversight by any and all Town of Henniker officials for all home improvements with a materials value of five thousand dollars (\$5,000) or less. The exemption will also apply to work performed by the homeowner or his agent and specifically will allow all labor (of any value) to be exempted. The homeowner will be relied upon to affirm the materials cost if the Board of Selectmen vote to request that specific affirmation in the open session of a regular meeting of the board. Only elected board members may make the affirmation request, and the authority for this purpose may not be delegated. One formal majority vote by the board for each request to each homeowner is also required. The homeowner's receipts for those materials will constitute proof. No additional requirement shall be made. The purpose of this exemption is to allow homeowners to make improvements that the homeowner deems reasonable to their property without interference from the Town~~

ARTICLE XVII Penalty

133-75 Violations and penalties Upon conviction thereof, every person, firm or corporation violating any of the provisions of this chapter shall pay a civil fine of not more than \$275 for each day that such violation is found by a court to continue after the conviction date or after the date on which the violator received written notice from the town that he or she is in violation of the chapter, whichever date is earlier. In any legal action brought by the town to enforce, by way of injunctive relief as provided by RSA 676:15 or otherwise, any provision of this chapter, or to enforce any Planning Board, Zoning Board of Adjustment or Building Code Board of Appeals decision, or to seek the payment of any fine levied under this section, the town may recover its cost and reasonable attorneys' fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action.

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676:17

fine levied under this section, the town may recover its cost and reasonable attorneys' fees actually expended in pursuing the legal action if it is found to be the prevailing party in the action.

Mark Fougere

From: Scott Osgood [dsosgood.henniker@gmail.com]
Sent: Wednesday, January 25, 2017 3:19 PM
To: Mark Fougere
Subject: Re: FW: Code Enforcement - FYI

Mark,

No, I cant be there to night. I am having a Public Hearing on Enfield changes to the Zoning Ordinance tonight. I spoke with Ron on Saturday at the Transfer station. He seemed very concerned about it, but did not recommend acting against it. In fact, he told me he expected the Board to approve it.

Had a long talk with Scott Dias yesterday, and Steve Burrirt on Sunday

Are you available to talk ? Like right now ?

Give me a call when you can.

Thanks for the head's up.

Scott Cell 603-848-8218

On Wed, Jan 25, 2017 at 11:05 AM, Mark Fougere <henniker3@tds.net> wrote:

Scott,

Ron just left here, can you come to tonight's planning board meeting?

Ron has some real concerns relative to the building inspector zoning change, it feels it is too confusing and having two questions on the ballot will confuse the public. What happens if both questions pass like Forster's issue last year? In addition, the Planning Board has not been fully briefed on it and little public input has occurred.

He is going to recommend to the Board tonight not to hold a hearing next week on the proposed change.

Mark

From: Scott Osgood [mailto:dsosgood.henniker@gmail.com]
Sent: Saturday, January 21, 2017 8:31 AM
To: Mark Fougere
Cc: David Osgood; Kris Blomback - Pats Peak Ski Area; Christine Trovato Work
Subject: Re: FW: Code Enforcement

Mark,

I think we will need to give the voter three options, With, without and As Is on the code enforcement question.

Does this seem correct ?

Scott O

On Fri, Jan 20, 2017 at 1:33 PM, Scott Osgood <dsosgood.henniker@gmail.com> wrote:

Mark,

I am proposing tow ordinances for the Town to choose between. One with a code enforcement process the other without..

There has to be two documents.

Scott

On Thu, Jan 19, 2017 at 9:46 AM, Mark Fougere <henniker3@tds.net> wrote:

Scott,

We are attempting to scramble to have a hearing on Feb. 1 for these changes. I have an email out to see who can make it, since it is not our regular meeting. I have a conflict that night and cannot make it.

As soon as I have four confirmed members who can make it, we will post.

I ask that you take these two documents and combine them into one, using track changes to note what is being deleted and what is being added as new language. Having two documents is too confusing.

I will keep you posted.

Mark

From: Mark Fougere [<mailto:fougereplanning@comcast.net>]
Sent: Tuesday, January 17, 2017 4:24 PM
To: 'Henniker Planner'
Subject: FW: Code Enforcement

From: Chris Trovato [<mailto:Chris.Trovato@tds.net>]
Sent: Tuesday, January 17, 2017 3:21 PM
To: Mark Fougere <FougerePlanning@comcast.net>
Subject: FW: Code Enforcement

Mark,

I'm reading the deadlines for Public Hearings, I think we are past the date for a public hearing for the Town to recommend a zoning regulation change. Am I right or wrong?

Christine Trovato, MPA

Town Administrator

Town of Henniker

18 Depot Hill Road

Henniker, NH 03242

(603) 428-3221 X 5

Website www.henniker.org | Email: townadministrator@henniker.org

From: Scott Osgood [<mailto:dsosgood.henniker@gmail.com>]

Sent: Monday, January 16, 2017 3:46 PM

To: Christine Trovato Work <Townadministrator@henniker.org>; Kris Blomback - Pats Peak Ski Area <kris@patspeak.com>

Cc: Cherry Palmisano <secretary@henniker.org>

Subject: Code Enforcement

Kris and Chris,

As requested, I did a bit more research on the code enforcement process.

I spoke with Lucy St John, the Planning and Zoning Administrator in New London. I asked her how the Town, Contractors and Business and Private Home owners deal with New London's system. Lucy told me that Town does not enforce the State Building Code and that they do not issue certificates of occupancy. I asked her what the Contractors and owners do for inspections of building projects. She stated they do enforce the Zoning requirements, and inspect for Fire Safety and Health issues. Beyond that, they do not offer any support on how to meet any other requirements.

I called a couple of contractors who do work in Towns with no Code Enforcement. I also called a number of Banks who provide mortgages in Towns with no NH State Building Code Enforcement. Most had the initial response of " that is a great question", which , to my mind says , they don't have a clue. The choice is left to the Mortgage Broker. One did some research and called me back and stated, "we require what the Town requires". I expect a few return calls and will let you know what the other banks response is.

With that, attached with this email are two recommendations on changes to our Zoning Ordinance regarding building code enforcement. One cleans up the existing ordinance to have a complete enforcement mechanism., the other does away with any Town responsibility for enforcement of the State Building Code. The original,

existing language notes that we do enforce zoning, fire safety and public health. That is not changed in either version.

I hope the board can choose to discuss this question fully, and act to put the choices on the Town Warrant for this year.

With Scott Dias on the agenda to talk about code enforcement. we should have the opportunity to have a complete discussion and make a decision on the topic.

Scott O

Draft



**Town of Henniker
Planning Board Meeting
January 11, 2017
Henniker Town Hall**

Members Present: Ron Taylor, Chair; Jonathan Lapointe, Scott Dias, Tia Hooper BOS rep., Alt. BOS Rep. Ben Fortner

Non-Voting Alternates:

Members Excused: Rick Patenaude, Jason Michie, Aaron Wechsler, Dan Higginson, Dean Tirrell.

Town Planner: Mark Fougere

Guests: Steve Forster, Bruce Trivellini, Kathleen LaBonte, Dennis McComish

Recording Secretary: M. Fougere

1) Call to Order/Attendance

Chairman Taylor called the meeting to order at 7:00 pm.

2) Approval of Minutes

Ms. Hooper made a motion to approve the Oct. 26th 2016 minutes, seconded by Mr. Dias, all in favor.

Chair Taylor recommended that the December 14th minutes be tabled given the Planning Board members missing from the meeting.

3) Projects of Regional Impact

Mark Fougere stated that there are no projects of regional impact.

4) Public Hearing

Chairman Taylor opened the public hearing on the proposed zoning change and explained the proposal.

Amend Chapter 133, Zoning Regulations, amending Article VIII Commercial District Regulations by amending the following Section as follows: Section 133-27 Regulation for commercial districts, A: All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this Article, ~~except that no building or commercial enterprise is permitted~~ However, should any change of use occur within 1,000 feet of town-owned land used for the Cogswell Spring Waterworks that contains a town well, then the proposed use shall obtain a Special Exception from the Board of Adjustment. ~~except by~~

January 11, 2017

Draft

Special Exception. The goal of this provision is to ensure the protection of the Town's valuable water supply.

Mr. Dias expressed concern about the impact on abutting parcels, he understands the concerns raised during the Dollar General application, but believes the 1,000 feet should be measured from the well head and not the property line. Greater impact on abutters when measured from the property line.

Ms. Hooper expressed similar reservations about the impact on property. Mr. Fortner also had concerns relative to impacts on abutting properties.

Mr. Lapointe expressed support for the proposed changes as written, the Cogswell Water Commissioners supported the language having the 1,000 measured from the property line. He is fine with how the amendment is written.

The Chair opened the public hearing:

Mr. Trivellini concurred with the comments made, he believes the proposed changes with the Planning Board overseeing the matter instead of the ZBA is much better. The Planning Board deals with these issues all the time. The goal of the ordinance is to protect the well, the 1,000 should be measured from that.

Mr. McComish expressed concerns relative to the 1,000 feet measured from the property line, would prefer to have it measured from the well head. He has property nearby and feels the proposed language would be an unfair burden on his property. He also feels the 1,000 is arbitrary and not based on any studies and backup. He father gave land to the water company and now it is coming back to hurt him. He is not against the company and he does not even have town water to his property.

Mr. Trivellini noted that 1,000 feet may not be enough given the Woburn MA contamination case.

With no other comments, the Chair closed the public hearing.

Members discussed the 1,000 distance and the consensus was to table the matter to January 25th and amend the language to measure the 1,000 feet from the well head and not the property line.

The Chair withdrew discussions on amending the Planning Board Rules of Procedure.

Other Business

Ms. Hooper summarized the road improvement plan produced by the Road Management Committee.

The Chair noted that he will not be running for another term on the Planning Board this coming year.

January 11, 2017

Draft

Motion by Ms. Hooper to adjourn the meeting, seconded by Mr. Dias all in favor. Meeting ended at 7:45 P.M, Motion passed 4 – 0.

January 11, 2017

Draft



**Town of Henniker
Planning Board Meeting
December 14, 2016
Henniker Town Hall**

Members Present: Ron Taylor, Chair; Jonathan Lapointe, Aaron Wechsler, Dean Tirrell, alternate Dan Higginson

Non-Voting Alternates:

Members Excused: Rick Patenaude, Scot Dias, Jason Michie, Tia Hooper

Town Planner: Mark Fougere

Guests: Spencer Bennett, Linda McGuire, Cogswell Spring Water Commissioners William Hall, Jr. & Jerry Gilbert

Recording Secretary: M. Fougere

1) Call to Order/Attendance

Chairman Taylor called the meeting to order at 7:00 pm.

2) Approval of Minutes – October 26, 2016

Chairman Taylor noted that given the missing members, the minutes should be tabled. Motion by D. Higginson to table the minutes, seconded by Aaron Wechsler all in favor.

3) Projects of Regional Impact

Mark Fougere stated that there are no projects of regional impact.

4) Public Hearing

Chairman Taylor opened the public hearing on the proposed zoning change and explained the proposal.

Amend Chapter 133, Zoning Regulations, amending Article VIII Commercial District Regulations by amending the following Section as follows: Section 133-27 Regulation for commercial districts, A: All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this Article, ~~except that no building or commercial enterprise is permitted~~ However, should any change of use occur within 1,000 feet of town-owned land used for the Cogswell Spring Waterworks that contains a town well, then the proposed use shall obtain a Special Exception from the Board of Adjustment. except by Special Exception. The goal of this provision is to ensure the protection of the Town's valuable water supply.

December 14, 2016

Draft

Mark Fougere also noted that this matter came to light during the Dollar General case. The intent of the ordinance, when written, was to protect the town's wells. Since that time Cogswell constructed the water tank on Davidson Road and the existing language requires a review of any new use within 1,000 feet of their property.

In addition, he noted that a letter had been sent in from Mr. Trivellini suggesting that the proposed amendment by a conditional use permit (CUP) process instead of involving the ZBA through a Special Exception process. Mr. Fougere noted that he had drawn up a CUP amendment that outlines specific criteria that would have to be met.

Mr. Wechsler stated that he preferred the CUP process instead of the ZBA.

Water Commissioner Hall noted some concerns the Commissioners have with the proposed language. The proposed language does not request input from the Commissioners, it does not relate to a well radius, and does not note source water protection. Commissioner Gilbert supported these concerns.

There was general discussion relative to the 1,000 radius and where it should be measured from; the well head or property line. The Board felt that measuring the 1,000 feet from the property line would provide the best protection.

Mr. Wechsler noted a concern with Mark's version; the first provision is not very specific "The Town's water resources are protected."

Water Commissioner Hall noted that it would be appropriate for any applicant to submit the BMP's they will follow as part of their operation. Mr. Wechsler commented that state statute should be referenced.

The Chair asked for opinion of all the members, all agreed that the CUP process would be best, keep review with one Board instead of two.

The Chair opened the Public Hearing, no comments.

The Board agreed that a CUP process was the most appropriate way to address this matter. The Chair asked Mark to amend his version to add specifics to the CUP provisions. Mark noted that he would re-write the ordinance and repost for the January 11 Board meeting.

The Water Commissioners asked that they be provided with a copy of the proposed language.

The Chair asked that the amendment to the Board's Rules of Procedure be put off to the next meeting.

The Chair asked if there were any questions on the 2017 Meeting Schedule, no questions raised.

Draft

Motion by Mr. Tirrell to adjourn the meeting, seconded by Mr. Wechsler; all in favor. Meeting ended at 7:45 P.M, Motion passed

Adjournment

A motion was made to adjourn the meeting at 7:30 pm by Mr. Dias and seconded by Ms. Hopper. Motion passed 5-0.



Henniker Planning Board

Meeting Agenda

Wednesday, January 25, 2017 7:00 pm

Town Hall

18 Depot Hill Road

- 1) Call to Order / Attendance
- 2) December 14, 2016 & January 11, 2017 Meeting Minutes – Review and approve.
- 3) Projects of Regional Impact
- 4) **Public Hearing**- Proposed Zoning Amendment, Second public hearing:

Section 133-27 Regulation for commercial districts, A: All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this Article, ~~except that no building or commercial enterprise is permitted~~ However, should any change of use occur within 1,000 feet of a town owned well used by the Cogswell Spring Waterworks then the proposed use shall obtain a Conditional Use Permit (CUP) from the Planning Board, except by Special Exception. A CUP may be issued provided the following provisions are met:

- a. The Town's water resources are protected consistent with NHRSA 485-C the New Hampshire Groundwater Protection Act.
 - b. The proposed use engages in Best Management Practices of Potential Contamination Sources to ensure proper handling of Regulated Substances as defined by NHDES.
 - c. The Planning Board obtains comment from the Cogswell Spring Waterworks Water Commissioners.
 - d. A Site Plan application and plan is submitted to the Planning Board.
- 5) Discussion:
 - 6) Other Business:
 - 7) Adjournment

Copies of all materials are available for review at Henniker Town Hall during normal business hours.

Draft



**Town of Henniker
Planning Board Meeting
January 25, 2017
Henniker Town Hall**

Members Present: Ron Taylor, Chair,, Dan Higginson, Dean Tirrell, Tia Hooper BOS rep and Alt. BOS Rep. Ben Fortner

Non-Voting Alternates:

Members Excused: Rick Patenaude, Jason Michie, Aaron Wechsler Jonathan Lapointe, Scott Dias

Town Planner: Mark Fougere

Guests:

Recording Secretary: Mark Fougere

1) Call to Order/Attendance

Chairman Taylor called the meeting to order at 7:00 pm.

2) Approval of Minutes

Chairmen Taylor explain that they did not have enough members present to vote on the Dec. 14, 2016 and January 11th 2017 minutes and therefore they will remained tabled.

3) Projects of Regional Impact

Mark Fougere stated that there are no projects of regional impact.

4) Public Hearing

Chairman Taylor opened the public hearing on the proposed zoning change and explained the proposal.

- 1) Are you in favor of amending Chapter 133, Zoning Regulations, Article VIII, Section 133-27 Regulation for commercial districts as follows? A: All uses permitted in the particular Commercial District are specified in 133-29 through 133-32 of this Article. ~~except that no building or commercial enterprise is permitted~~ **However, should any change of use occur within 1,000 feet of a town owned well used by the Cogswell Spring Waterworks then the proposed use shall obtain a Conditional Use Permit (CUP) from the Planning Board.** ~~Except by Special Exception.~~ **A CUP may be issued provided the following provisions are met:**

January 25, 2017

Draft

- a. *The Town's water resources are protected consistent with NHRSA 485-C the New Hampshire Groundwater Protection Act.*
- b. *The proposed use engages in Best Management Practices of Potential Contamination Sources to ensure proper handling of Regulated Substances as defined by NHDES.*
- c. *The Planning Board obtains comment from the Cogswell Spring Waterworks Water Commissioners.*
- d. *A Site Plan application and plan is submitted to the Planning Board*

Selectmen Fortner asked about Section C and the requested comment from Cogswell, what type of comment is the Board looking for. The Chair noted that the Board often asks for comments from departments regarding projects that are in front of them and this is no different. The Water Commissioners were at a previous meeting and requested they be notified of projects and as a result of that comment, the section was placed in the proposed ordinance.

The Chair asked for any public input, none was received (no one was present).

The Chair asked for a vote to place the proposed zoning amendment on the ballot; motion made by Ms. Hooper seconded by Mr. Higginson, all in favor 4 – 0.

Mr. Higginson made a motion to accept the resignation of Planning Board member Rick Patenaude with regrets, Ms. Hooper seconded the motion, all in favor 4 – 0.

Other Business

The Chair raised a concern relative to the proposed zoning changes offered by Selectmen Osgood relative to the building inspector, a public hearing is scheduled for February 1. The change would involve two questions on the ballot and he believed it would be confusing to the voters and what would happen if both passed (like last year with Steve Forester's petition). Mr. Fortner has a similar concern and noted the full Board of Selectmen have not fully discussed this matter. Ms. Hooper expressed similar concern along with Mr. Higginson concurred.

Mr. Tirrell made a motion to cancel the proposed public hearing, seconded by Mr. Higginson, all in favor 4 – 0.

Motion by Ms. Hooper to adjourn the meeting, seconded by Mr. Higginson all in favor 4 – 0.
Meeting ended at 7:20 P.M.