

**North Salem Planning Board Minutes**

**August 5, 2009**

**7:30 PM – Annex**

**PRESENT:**  
**Cynthia Curtis, Chairwoman**  
**Charlotte Harris, Board Member**  
**Robert Tompkins, Board Member**  
**Gary Jacobi, Board Member**  
**Bernard Sweeney, Board Member**  
**Roland A. Baroni, Town Attorney**  
**Hilary Smith, Planning Consultant**

**ATTENDANTS:**  
**Clearwater Excavating: Don Rossi, Esq.**  
**Total Energy: Phil Campagna**  
**Salem Hunt: Bill Balter**  
**Tim Miller**  
**Jon Dahlgren**

**Chairwoman Cynthia Curtis calls the August 5, 2009 North Salem Planning Board Meeting to order.**

**REGULAR MEETING:**

- 1. Clearwater Excavating: Don Rossi, Esq.** (owner – Gilbert Shott)  
**Site Development Plan** (location – 110 Hardscrabble Road)

Discussion of Completeness of Application and Procedural Steps.

Cynthia states that the approvals were all in place, except the wetland mitigation plan was being worked on, but then the approval expired. We now have a Re-Application procedure with the current zoning, which is residential zoning as well as Special Use Permit of the Planning Board. We have a memo from Hilary Smith and Joe Bridges dated July 29<sup>th</sup>. The Application is not complete.

Don Rossi is here tonight and states a request for the Applicant to begin work in advance, which he will talk about later. Mr. Rossi states that procedurally the review memo indicates that it is a Type I action because the disturbance exceeds five acres. Mr. Rossi states that he believes the disturbance is less than five acres. Mr. Rossi states that according to their Site Plan calculations, there is a total disturbance of 5.7 acres on the Site. There had been a significant amount of disturbance previously. The 5.7 acres includes the disturbed areas of the original Site Plan. Mr. Rossi states that they are down to approximately 2.5 acres of disturbance on the original Site Plan from the 5.7 acres, which is well below the five-acre threshold.

Cynthia asks why what the Board is looking at now is not exactly what we looked at before? It was a Site Plan on an entire Site. Even before, the old four-acre piece was not being disturbed; it was the new part. Cynthia states that she is not following Mr. Rossi's logic that we are looking at a different size now. Mr. Rossi confirms that they had a Type I action before. Cynthia states that when Michael Liguori raised the question, she sent it over to Roland. Roland asked me what the prior action was. I looked it up and confirmed it was a Type I action. Mr. Rossi does not recall that zoning based on the acres. Roland states that we should be consistent. Cynthia asks that considering what has to be done, is it really an issue? Mr. Rossi states that he would assume the Planning Board would be Lead Agency. Mr. Rossi states that the Applicant has received all outside agency approvals. Mr. Rossi states that all Conditions of Approval, to his knowledge, have been met. Mr. Rossi states that we would have an uncoordinated review of a Type I action.

Cynthia states that this would still be a coordinated review. Cynthia states that nothing new should be popping up. It should run smoothly. Mr. Rossi asks that if all of the approvals have been granted, with whom are we going to coordinate it? Cynthia states that it will be coordinated with the involved agencies as a reaffirmation that their approvals still stand. Roland states that it is better to have a coordinated review so that if anything else is expiring, it will be covered with the outside agencies review. Mr. Rossi states that he is told it's not. Mr. Rossi states that if it is a Type I action, the Board has the authority to determine we are not required to prepare an Environmental Impact Statement. Mr. Rossi talks about the Board's willingness to do this. Mr. Rossi states that would be a significant deal. Mr. Rossi states that if the outside agencies have taken their actions, all of their permits are in place, what we are doing here will not impact any of those agencies, except DEC, which has approved the current plan, they are not involved agencies any more. Their actions have been taken; they don't need to approve the project. Mr. Rossi states that the agencies might be interested, but technically not involved.

Roland asks if any of the other agencies issue permits based upon the current Plan. Cynthia states that they all do. Roland states that this Plan will be out of sync with the prior Plan. Mr. Rossi states that the only aspect of this Plan that has changed is the wetland mitigation plan. Mr. Rossi states that the Town has the additional approval of the Stormwater Pollution Prevention Plan. Mr. Rossi states that they are not doing anything that would change any aspect of the other approvals. Roland states that for tracking purposes, there will be a DEC Wetlands Permit that is based upon a Plan from 2007. Mr. Rossi states that the DEC Wetlands Permit is based upon this current proposed Plan. Cynthia states that it may be based on this Plan, but not on the application materials packaged with this Plan. Mr. Rossi states that they have tried to streamline the process as much as they can. Mr. Rossi states that if they are considered involved agencies then that adds time to the process of approximately one month after lead agency intent declaration takes place. There is discussion about a coordinated review, or an uncoordinated review. Mr. Rossi would like the agencies be treated as interested agencies, so that packages would be circulated to them so they may see what is going on. Mr. Rossi does not like the idea of giving the agencies a classified status.

Cynthia asks Hilary if she has any opinion or comments on this issue. Hilary states a concern that when revisiting the Stormwater to comply with the Town's Requirements there may be changes to the Site Plan. Cynthia asks if those changes would impact a DEC Permit. Hilary is not sure. Roland states that the risk is to the Applicant. If this is the path the Applicant goes down, and an agency objects, the Applicant will have a problem. Cynthia states that the Town reviews the Stormwater Pollution Prevention Plan and asks if the DEC or DEP reviews them for certain thresholds. Bruce Thompson states that they have the ability to review the SWPPP's, but they usually go on the basis that the Town is implementing their guidelines. The agencies are given notice that the SWPPP has been filed. Cynthia believes this is a five acre plus disturbance. Mr. Rossi states that he did not review the entire file, but will check. Cynthia states that neither did she on this specific subject. Mr. Rossi does not remember if they had a DEP SWPPP approval. Cynthia states that they did not have to do a SWPPP the first time around, but now they do. Mr. Rossi states that for the Town they didn't. Mr. Rossi states that for the DEP nothing has changed since they went through the process.

Cynthia states that the safer route would be to follow the same SEQR Steps. Cynthia states that the bigger issue is the question that Mr. Liguori raised in his e-mail about proceeding with some of the work while this is all pending. Cynthia states it is the main reason Bruce is here tonight, and will be the first time Hilary is weighing in on the discussion. Cynthia asks Mr. Rossi to explain exactly what the Applicant would like to do at this stage. Mr. Rossi states that they would like to proceed with the DEC's work because the inability to do that will push them off into next year. Mr. Rossi states that it is in both the Applicant's and the Town's best interest to get that work done. Mr. Rossi states that they would like to be able to go forward. They have the DEC Permit which expires approximately 10/30/09. Cynthia asks Mr. Rossi if the extent of the DEC Permit work is just for the wetland restoration. Cynthia states that she was not part of the first permit process.

Cynthia points to the areas on the map and confirms there are three areas that are part of the DEC Permit. Cynthia states the Applicant would like to remove some of the trees, build the detention basin, install the plantings around the detention basin, and proceed with the restoration work. Cynthia states that Joe was out in the field twice, and she is not sure if he had a problem with the Applicant getting the work done during the right season. Cynthia asks Hilary if she needs time to review that with Joe.

Hilary states that the Applicant would need a Wetlands Permit Approval from the Planning Board. Cynthia states that they technically have that, and is not sure if it has expired. It was given by the Resolution of Approval. It was the Site Plan that expired. It was all part of the same Resolution. Roland is not sure if there is a separate expiration in the Town Code. Roland asks Bruce if he knows. Bruce states that all of the wetlands permits contain language about expiration. Cynthia is looking to see if she has a copy of the Resolution with her tonight. Mr. Rossi does not have his with him. Hilary states a concern for the potential of the basins changing. Cynthia asks why Hilary feels the basins might change. Hilary states that we don't know what changes are needed for the stormwater management. Cynthia states this all goes back to the Stormwater Management Plan that never happened. Mr. Rossi states that before Joe Buschynski prepared the SW3P that went to the DEC, he discussed with Frank Annunziata the fact that they had to comply with the Stormwater Pollution Plan so their SW3P that was prepared by the DEC would be in compliance according to their Draft.

Cynthia asks Mr. Rossi how quickly their engineer will be able to turn around a complete Application. Mr. Rossi states very quickly, subject to a few issues that we need to discuss tonight. Cynthia asks Mr. Rossi how quickly the SWPPP may be submitted. Mr. Rossi states that they have a SWPPP, which has not been reviewed. Cynthia states that as of July 31<sup>st</sup> Hahn Engineering did not have it. Cynthia asks where it is. Mr. Rossi states that it is in Bibbo Associates office. Cynthia states that if the SWPPP is submitted we could expedite a review by Frank to answer the basic question as to whether it will trigger changes to the Site Plan. Cynthia does not believe this may move forward until then. Cynthia states that the Board has previously mentioned to Mr. Shott that his engineer should submit information quickly. Cynthia confirms with the Board that as soon as the SWPPP is submitted it will be forwarded to Hahn Engineering for review. Hopefully a preliminary report will be available within the next two weeks. Cynthia states that there is a Work Session in two weeks. By then the SEQRA aspect will be researched. The SWPPP may trigger involved agencies. We can't start the SEQRA process unless the Application is complete. Mr. Rossi talks about the SWPPP possibly being identical to what was sent to the DEC. Cynthia asks Mr. Rossi if the SWPPP is the same document that was sent to the DEC, why was it not included in with their submittal to the Board. Mr. Rossi can't answer that.

Mr. Rossi refers to buffers and asks if we are all right with the setbacks. Mr. Rossi states that there are confusing provisions in the Ordinance. Mr. Rossi states that there have been a lot of discussions before this Board about the property being lower in elevation than the Hardscrabble Farms and Outhouse Orchards properties, as well as being screened from Hardscrabble Road. Mr. Rossi requests that they be able to leave the buffer and exterior areas as they are. Cynthia asks if the Board understands the issues with the buffers. Cynthia states that normally if someone is infringing a buffer then it is in addition to a yard. The size of the buffer may be reduced. The important thing about a buffer is that it is a permanent feature, and if it deteriorates in the future, it would be replaced. Cynthia states that the buffer should have been one area and the setback should have been a second measurement from the buffer. Cynthia states that it appears that the Applicant may meet that criteria, but it is not shown on the Plan as a buffer and a setback.

Gary asks what the question is. Cynthia inquires what the Board's intention was when they first reviewed this. Did the Board want both? Gary states that he doubts they would have wanted both. Cynthia states that is the way the Ordinance is set up and the way a buffer is normally done. Cynthia states that if the Board chooses to have a buffer, they would also request to have a setback. Or there may be a setback with

landscaping requirements within it. Cynthia states that it is a terminology issue. Mr. Rossi states that it is up to the Board's discretion. We had extensive discussions about this. Mr. Rossi states that for practical purposes it would move the setback line into the Site, and then get into our materials, storage and processing areas especially along the northerly part of the Site. Cynthia points to the Plan and talks about an area where there is a little road. Hilary states that she thought the definition did not do that anymore. Cynthia states that the definition of buffers came with the CB District. Cynthia states that since the CB District was rescinded, that definition is hanging there, as it doesn't match anything anymore. Do we revert back to the original intent of a buffer because we are in an R-1 Zone? Cynthia believes it was an oversight that it was not pulled with everything else.

Mr. Rossi states that it was not an oversight on the Site Plan. Mr. Rossi states that this is the only property that was going to be zoned CB, everything around it was going to be R-1 or R-1/2. Nothing has changed as far as the property to be buffered. The bottom line is that regardless of what the Ordinance says, the Planning Board has the authority to approve the Plan exactly the way it is which was exactly the way it was when the Planning Board approved it last time. Cynthia states that the Planning Board also has the authority to reduce the size of the buffer or to not have a buffer at all. Mr. Rossi talks about Hilary's Report which refers to Notes being put on the Plan, and states that there will be a Note, which states that there is to be no activity related to the use in the setback area.

Mr. Rossi states that between the Site not being very visible from the road, given the adjoining property uses, and topography, this is an appropriate layout as far as the setback and buffer areas. Cynthia states a concern about what is taking place in the area, not so much the size of it. While the definition states that a buffer has a minimum dimension of the respective required yard, it does say that such buffer area may be reduced where local conditions warrant and substitute measures are described for the protection of neighboring properties or adjacent uses similar to that proposed as a condition of approval. Cynthia states that a neighboring use is not going to be similar to what is being proposed. The question is whether or not we are providing the protection the Ordinance intends.

Mr. Rossi states that should be granted in conjunction with the supplementary conditions, which also deal with buffers. The supplementary conditions provide some inherent protection. Hilary states that the supplemental requirements for this Use allow the Applicant to use the yards for planting, as long as the plants are removed. If it is a designated buffer, they are not allowed to plant their plant stock there. There should be a distinction between what is allowed in a buffer and what is allowed in a yard. Cynthia states that what is important here is to protect the neighboring properties. If we can agree that the plantings remain permanent and a condition be put on the Plat that in the future if anything were to happen to those plantings the Applicant must replace them with the same type quality plantings, or come back for a further review of the Planning Board. Cynthia asks the Board if they may agree that the buffer is important and there should be flexibility.

Mr. Rossi states that so much time has been spent on this. Mr. Rossi states that the greenhouses for Outhouse Orchards are to the right of the upper boundary line. Mr. Rossi does not believe there is a need for screening there. Mr. Rossi states that he would be surprised if there isn't a Note on the Plan already regarding the maintenance of the plants. Robert states that he knows the property and feels the issues of topography have been addressed. We went to great lengths when reviewing the buffer to make sure it is sufficient for the future use. Cynthia talks about a future multi-family housing site near by, and shows the NYSEG property on the Map. Hilary states it would be helpful to distinguish the extent of the buffer from the yard, label it on the Plan, and refer to the buffer requirements and the supplemental requirements associated with this Use. Hilary states that if a substantial portion of the back lot line is going to be designated as a buffer it should be labeled and graphically distinguished as such.

Mr. Rossi inquires why it needs to be called a buffer. Mr. Rossi does not believe there needs to be a buffer on

this Site because of the various protections built into the Site Plan, the Notes, and Ordinance. Cynthia states that a buffer is needed because it guides people in the future. Cynthia does not have a problem with saying that the buffer and setback are one in the same. Hilary states for future regulatory purposes, it is important to be able to tell by looking at this Plan what is supposed to be a yard and what is supposed to be a buffer.

Cynthia asks Mr. Rossi if he has any other issues regarding the MDRA Memo. Mr. Rossi does not have the Memo with him. An extra copy is provided. Mr. Rossi has a question regarding the reference about the designation of the plantings. Cynthia believes Joe was just correcting the proper names. Bruce states that DEC should not have an issue with the type of plants. Mr. Rossi will take another look at it. He believes they may need to substitute something.

Mr. Rossi discusses the Note regarding the sequence for the removal of the old road, and states that may be more problematic for the DEC. We figured we wouldn't touch it. Cynthia asks Mr. Rossi if he was out on the Site Inspection. Mr. Rossi states no. Cynthia states that everyone in the field agreed to the language regarding the sequence. Cynthia states that there were two meetings held in the field, as well as follow-up field notes. Cynthia states that everyone who has approval authority attended.

Mr. Rossi refers to Page 5 in the Memo regarding the monitoring schedule for the survival of the plants. Mr. Rossi states that this looks like another approval that they shouldn't have to deal with. Bruce talks about periodic inspections taking place so that by the five year mark there should not be any surprises. Hilary will change the monitoring language to state that at the end of the fifth year the developer and environmental monitor will schedule a Site meeting with the Wetlands Inspector and issue a final Report.

Cynthia states that normally we would require three weeks prior to a meeting for a submittal. Cynthia states that if the Applicant makes a submittal by the end of this week, she will see what she can do. Cynthia states that Frank is on vacation. Cynthia states we are doing this so as not to have another growing season go by. The SWPPP is a key component. There should be clarification about the possible expiration of the Wetland Permit.

**2. Total Energy:** Phil Campagna (owner – APC Group, LLC)  
**Sign Permit** (location – 2-4 Hardscrabble Road)

Consider Referral to Zoning Board of Appeals Regarding Sign Variance.

Phil Campagna is here tonight from Total Energy. Cynthia states that if the proposed sign was clearly 10 feet back from the property line, the Applicant would be looking at a Draft Resolution of Approval tonight. Cynthia states that she has been working with Mr. Campagna to see if there is a way to avoid the need for a Variance. Cynthia states that if the location for the proposed sign stays the way it is now, the Applicant will need to be referred to the Zoning Board of Appeals (ZBA) for a Variance. Mr. Campagna passes out a revised Plan in order to give the Board more perspective, and states that the sign will not be that large. Cynthia confirms this current Plan accurately shows the wall as it is today. Cynthia talks about the property line issue.

Mr. Campagna points out the flags he has on the Plan which show the property line, and talks about locating the sign right on the edge of the property line. Mr. Campagna states that safety is an issue in this location. At one time, they did have a sign under the birch trees. Cynthia asks Mr. Campagna if they locate the sign on the property line will it be parallel to the road. Mr. Campagna confirms it will be perpendicular. Mr. Campagna talks about the stop sign, and states that if the sign was perpendicular to the road, that would be safer. A two-sided sign is being proposed. Cynthia states that the measurement is not from the curb. The property line has to be located in the field. This is important when going to the ZBA. When you ask for a Variance you have to ask for the exact Variance you need. The law states that the sign has to be 10 feet back from the property line.

As an example, if you were to locate the sign 6 inches back from the property line, then you would need a 9 ½ foot variance. Cynthia confirms with Roland that this would be a Referral from the Planning Board, as it is still an Area Variance. Cynthia confirms with Mr. Campagna that he has exhausted all of his options.

Cynthia confirms that Mr. Campagna is concerned about the safety of the traffic from both ways. There is a discussion about the DOT sign blocking the Total Energy sign. Mr. Campagna states that the DOT sign is very high, so it should not be a problem. We are trying to avoid people having to turn their head to see our sign. Cynthia states that she drafted a Resolution for tonight, but the Applicant will require a Referral to the ZBA instead. Cynthia asks the Board if the Applicant should nail down the exact location so the ZBA will know. Cynthia states that the ZBA may go and take a look. Mr. Campagna talks about submitting a mock sign to the ZBA. Cynthia confirms there are no other businesses on the property that would require signs in the future. Cynthia will send a short memo to the ZBA regarding the Referral. Mr. Campagna should see Janice Will about the Variance Application, and he may want to sit down with Bruce Thompson.

**3. Salem Hunt: Tim Miller Assoc. & Wilder Balter (owner – June Road Properties, LLC)  
Residential Site Plan & Subdivision (location – June Road & Starlea Road)**

Completeness Review, Acceptance of FEIS, and Circulation to Involved Agencies.

Cynthia states that a Report from MDRA has been circulated regarding the completeness of the FEIS. This Report was sent over to Tim Miller's office. Cynthia asks Mr. Miller if there are any questions. Mr. Miller states no. Cynthia states that she has been working on the circulation list. The number of hard copies needed have been cut down. Cynthia states that most of the interested agencies have chosen viewing the FEIS on the Town Website, or some have chosen CDs. Cynthia asks the Board their preference. Gary, Robert and Bernard will view the FEIS on the Town Website. Cynthia and Charlotte would like a hard copy. Cynthia states that she has received feedback from some of the involved agencies with a concern about only having 10 days to turn their review around. The Board talks about a 30 day comment period. There is discussion about having the Applicant back on the September 2<sup>nd</sup> Agenda to discuss the Findings. Cynthia states that this all depends on how well the Findings Draft goes.

Cynthia states that the involved agencies will issue their own Findings. Cynthia states that some of the agencies stated an interest in generating memos, and did not believe they could turn them around in 10 days. There is discussion about the Applicant making a submittal the end of this week or beginning of next week. There is discussion about providing revisions to Cynthia instead of Hilary. The link will be sent to Cynthia. Clarification is made that September 7<sup>th</sup> is 30 days. The Applicant intends to file this coming Friday. The Applicant agrees to extend the timeframe under SEQR.

Cynthia states that two people asked questions or made statements at the end of the DEIS commentary period. They were from Karen Kurrasch and the CWCWC. Cynthia likes to see the comments addressed, and states that there will also be time for questions to be raised when the Public Hearing on the subdivision application is opened. The CWCWC Newsletter is discussed which had questions about the aquifer and draw downs. Mr. Balter states that he has seen the newsletter. Cynthia provides Mr. Balter with another copy. Mr. Miller states that they will respond to these during the comment period. Mr. Balter will make contact with both of these groups. Cynthia asks Dawn to check and see if the Library is on the circulation list. Jon Dahlgren will mail out the hard copies, as well as the CDs.

Hilary will revise the Draft Resolution to add in a separate whereas regarding the extension of the comment period to 30 days. Cynthia asks if anyone else has questions or comments on the Draft Resolution. Hilary states that she highlighted the locations for the receipt of hard copies for Planning Board Office, Town Hall, and Library. Cynthia suggests a reference to the Town's website also be added.

**Chairwoman motions that the Planning Board Approve the Draft Resolution of Determination of Project Sponsor's Final EIS Adequate for Circulation and Public Review for the Salem Hunt Residential Site Plan and Subdivision Project, as Amended. Bernard Sweeney seconds. All in Favor. No opposed.**

**4. Minutes:**

- July 8, 2009
- July 22, 2009

**Chairwoman motions that the Planning Board Approve the Minutes of July 8, 2009 and July 22, 2009. Charlotte Harris seconds. All in favor. No opposed.**

**5. Financial Report:**

- July, 2009

**Bernard Sweeney motions that the Planning Board Approve the Financial Report for July, 2009. Charlotte Harris seconds. All in favor. No opposed.**

**6. Release of Escrow per Written Request:**

- Dearborn - \$175.00

**Chairwoman motions that the Planning Board Approve the Draft Resolution to Release the Escrow in the Amount of \$175.00 for the Dearborn Lot Line Project. Robert Tompkins seconds. All in favor. No opposed.**

**7. Next Meetings:**

- Work Session – August 19, 2009 – Steep Slopes Revisions & Sign Provision Discussion
- Regular Meeting – September 2, 2009

**8. Comments from the Chair:**

Cynthia states that a submittal came in regarding a proposed telecommunications facility at 509 Route 22. The APRL Form has yet to be submitted. Once that has been submitted and authorized the submittal will be officially stamped, and a review may begin.

**9. Resolution:**

**Chairwoman motions to adjourn the Planning Board Meeting. Bernard Sweeney seconds. All in favor. No opposed.**