

North Salem Planning Board Minutes

October 21, 2009

7:30 PM – Annex

PRESENT: **Cynthia Curtis, Chairwoman**
 Charlotte Harris, Board Member
 Bernard Sweeney, Board Member
 Robert Tompkins, Board Member
 Gary Jacobi, Board Member
 Sonja Teichmann, Planning Consultant

ABSENT: **Roland A. Baroni, Town Attorney - not required to attend**

Chairwoman Cynthia Curtis calls the October 21, 2009 North Salem Planning Board Meeting to order.

WORK SESSION:

1. Continuation of Discussions of Various Code Issues:

- Chapter 107 - Freshwater Wetlands
- Chapter 189 - Tree Cutting

Chapter 107 - Freshwater Wetlands:

Cynthia states that we are moving along nicely with the Wetlands Ordinance changes. We have a memo from MDRA going back to July. We need to focus in on the thresholds in both the Chapter 107 Freshwater Wetlands, as well as the Chapter 189 Tree Cutting. As we start reviewing the applications that are coming before us, it appears that too many are going to be coming over to the Planning Board for a full review. Cynthia does not believe that was the original intention. Cynthia would like to understand from the Board the thresholds they had in mind when they worked on Chapter 189 several years ago, and where we want to go with these Laws. Cynthia states that people have been coming in with requests to dredge their ponds. If the dredged materials will be distributed on the individual properties, it triggers the need for a Chapter 189 Permit due to the disposal of the fill. It may also trigger the need for a Chapter 189 Permit if trees are proposed to be taken down. Cynthia states she has had conversations with Bruce Thompson and Joe Bridges to discuss what the content of the Ordinance is, as well as what is reasonable and where we want to go with these Laws. Cynthia does not believe that the Board would like to have all of these Applicants go through a full Planning Board review, including Public Hearings, if Applicants fit certain threshold criteria's.

Cynthia states that the Board should concentrate on coming up with the threshold criteria's tonight in order to provide direction to MDRA. Cynthia states that Sonja may have feedback from Joe for us tonight. As an example, Cynthia states that currently, there is a pond dredging Application for a property located on Hunt Lane, being handled by Bruce and Joe. The Applicant is proposing to dredge a pond and locate the materials on the property. If this activity was temporary, it may not trigger a Permit. This will be a permanent placement of fill materials. Cynthia states that she looked more closely today at Chapter 189 and noticed that there is no threshold for what would trigger a fill activity, and there is no threshold for excavation. Cynthia refers to Chapter 189-3D, and reads "in connection with landscaping improvements on a lot where the area landscape does not exceed 20% of the total lot area, but in no event more than one (1) acre, and provided that no fill is deposited or vegetation is cleared within a Controlled Area as defined and regulated in Chapter 107 of the Code of the Town of North Salem, that disturbed areas are promptly graded and reseeded or otherwise planted, and that the finished slope does not exceed the standard specified in 189-7B of this chapter."

Cynthia refers to the Hunt Lane Application and states that they are proposing to dredge a pond, and spread out the fill, which will become part of their landscaped lot. Robert states that they are re-grading the property with existing materials. Cynthia talks with the Board about having this type of proposal exempt under Chapter 189-3D. Cynthia gives the example of 10 wheelbarrows full of dirt being placed on the property, and asks if the Board wants to get involved. They do not. The Board discusses how they want to set up thresholds. Robert states that everyone is different, 10 wheelbarrows may be a lot for someone, and 10,000 wheelbarrows might not be any more of an impact for someone else. Robert talks about the issue of taking fill out in order to make a pond. The fill has to go somewhere. It is most cost effective to put it back on the property. Cynthia states that if someone makes a pond, they would berm it. Robert agrees. He can't imagine why anyone would want to haul the fill out. Cynthia refers to the Hunt Lane Application and states that over the years all of the rain has brought the silt. The Application is to have it taken out and spread out over the property. Cynthia asks the Board if in this instance, they want it to trigger a Chapter 189 Permit. The Board states no. Cynthia asks the Board if it falls under the definition of landscaping. The Board does not believe it would. The Board talks about coming up with a better definition of landscaping. The Board discusses whether in the Hunt Lane Application the action would provide for a landscaping improvement. Gary states it might be deterioration, and not necessarily an improvement. Cynthia does not want to dictate individuals taste. Cynthia agrees that we need to make this clear.

Cynthia wants to understand what the Board wants to trigger Permits, what the Board feels may be handled by the Building Inspector, and ultimately what Applications would come to the Board. Cynthia states that there were discussions and changes to this Law about ten years ago. Robert asks what the standard of the finished slopes in Chapter 189-7B. Cynthia states the post-development slopes shall not exceed fifteen (15%) of the horizontal or such lesser slope that the Planning Board may specify as necessary. Gary talks about the dumping of materials not being allowed to change slopes by a certain percentage. Cynthia states that we need to know how much fill is coming in. Gary asks Cynthia what she would propose. The Board talks about looking at the Fill Law, as well as the Stormwater Law, we have examples of triggering quantities.

The Fill Law, which is Chapter 89, does a little bit of what Chapter 189 is doing. The purpose of the Fill Law was to make sure that what was being brought in is clean, and has a certification. This Chapter is for all excavation and all fill coming in. Cynthia states that we are talking about any instances where people bring in or take out fill. Cynthia states there is no threshold for Permits. The language states that anytime someone brings in fill or takes out fill, they need a Chapter 189 Permit. The exceptions are the five exemptions. The Board discusses whether dredging of a pond should be considered a landscaping improvement. Gary states that dredging an existing pond is maintenance. Charlotte states the only issue would be not to put the fill in the wetlands. Cynthia states that sometimes it is not an issue. Bruce states that there is a definition of landscaping improvements in Chapter 189-11. Bruce states that the definition is very stringent. Cynthia states that the Applications need a level of review, which may be done by the Building Inspector with the help of the Wetlands Inspector when necessary. We will then get to the threshold of what would send an Application over to the Planning Board.

Cynthia suggests the Board start with the excavation of a pond or the bringing in of fill. Cynthia refers to the huge dumpsters and states she believes they are 30-yard dumpsters. If someone is bringing in 30 cubic yards they may be leveling off an area. Cynthia confirms with Bruce that if someone is building a tennis court they would come in for a Building Permit. Robert states that the majority of the problems may occur on larger properties where they have the capacity to put in a pond. Robert states that 500 yards is not a lot of material. Cynthia states that if the area is 5,000 square feet or more, they need a Stormwater Pollution Prevention Plan. Cynthia suggests 5,000 square feet would be the threshold and both Permits may be done at the same time. Do we want those Applications to come before the Planning Board? Cynthia states that a lot of people in Town have 5, 10, 20 acre parcels. Bruce states that the immediate problem is the dredging of an existing

pond. People may go through many months of review. Bruce states that the pond is already there. We should talk about the maintenance, and what thresholds would work with the stormwater regulations. Then both parts of the review are consistent. Cynthia states that the dredging of a pond would be covered as a Wetlands Permit. If the placement of the dredged material is in the controlled area, that could be covered as a Wetlands Permit. Bruce and Joe may be able to handle that administratively without the involvement of the Planning Board. Cynthia refers to Candlewood and states that there was a lot of dredged material. We are talking about hundreds of cubic-foot yards of material. If we look at each individual lot it was not a big deal. Bruce remembers it being a big deal. People were complaining about how large the area of disturbance/drainage area. It was the size of a baseball field. Cynthia states that is a temporary staging area for construction. A huge berm was created.

Gary confirms that we have a few Applications for pond dredging. Cynthia states that these Applicants will be coming to the Board because they will be placing the fill on their property, which makes it a Chapter 189 Permit. Cynthia states the way the Ordinance is written now, they have to come to us. The Law says that the Applicants have to come before the Board and go through a full Chapter 189 review process. Cynthia states that is burdensome for the residents. Gary does not recall a lot of this type of Application coming before the Board. Cynthia states that not all of the Applications have been sent to the Board. Cynthia refers to Lake Hawthorne coming back before the Board. Cynthia states that there is another Application for the Straus/Sullivan property, which may be coming before the Board. The Board has to decide if they really want to get involved with all of these deposits of dredged materials.

Bruce talks about an Applicant being under review for one chapter being exempt from another chapter. The Board likes that idea. Lake Hawthorne would be an example. Bruce states that some Applications come to the Board automatically, such as disturbance in a wetlands of five acres or more. Cynthia states that if someone replaces a bridge without touching the footings, and the bridge goes over a stream that is part of five acres of wetlands or more, the Applicant would need a full Board review. The Board talks about that being a maintenance situation. Bruce talks about repair and replacement being exempt. The requirement of new footings is discussed. Bruce states that the Ordinance, upon examination, has become unworkable and difficult to enforce. Cynthia gives an example of someone who wants to take fill off their property. It is not within 100 feet from their house, and not in connection with anything else. A resident may have gravel in their backyard that they want to sell. It may be three or four truckloads worth. That action would require a Permit. The quantities and disturbance should be discussed. Bruce states that we are at this point due to the number of pond dredging applications. Bruce states that most of the time, the movement of earth is initiated by a Permit or another activity. Cynthia states in recent history we have had people bring in fill. The threshold should be the same. Robert states that those activities should not warrant Planning Board review. Robert states that the Building Inspector should decide when this type of Application should be referred to the Planning Board. It should be up to the discretion of the Building Inspector. Cynthia states that we have to think about fairness from one resident to another.

Cynthia refers to the cutting of trees. Some people come in for a Permit, and others do not. The Board discusses whether it makes sense to limit residents to only cutting down three trees in one calendar year. Gary states that if we change it to ten, people will still not come in. Cynthia states it will be more reasonable. It will better serve the intent and purposes of why we have the Permit in the first place. Cynthia states that is why she copied the Bedford Code for the Board to see. It is more reasonable. The number of trees allowed to be cut is based on the acreage. Bernard states that there should be a number as well as acreage. Bernard will review the Bedford Code. Bruce states that the definition of landscaping improvement is right on. The Board talks about taking out the language, which refers to activities within 100 feet of a house.

Bruce goes over a document he prepared for the Board to review regarding Chapter 107 thresholds, as far as what would qualify for a quick review. Cynthia confirms a quick review would be handled by the Building

Department and the Wetlands Inspector without the involvement of the Planning Board, or the Committee of Three. Bruce states this document is just for discussion purposes. Bruce talks about wetland activities and states he has a neighbor who had to obtain a DEC Wetland Permit to get to a well on the other side of a stream. This well has been there all of this time. There is not much disturbance. Bruce suggested a conduit be installed in order for his neighbor to avoid this situation in the future. There is a discussion about referrals being made to the Planning Board where there is five acres or more of wetlands. The Board discusses changing the definition regarding disturbance in a wetland. There is a discussion about the wetlands on the Library property, and making the threshold practical as far as what Applications come to the Planning Board, and what portions are waived.

Sonja states that when there is a minor impact, the review could be handled by the Building Inspector. Gary likes the idea of the Committee of Three. They should be provided with criteria to work from. Bernie states that if criteria's are not in place, there may be a situation as to who is investigated and who is not investigated. Sonja will draft a few thresholds for further discussion. The Board could have the option to kick back an Application that is referred to them. Sonja states that she and Joe were reviewing the definition section in the Wetlands Ordinance and it is outdated. It should be updated. There is discussion about adding in definitions regarding selective timber harvesting. There is a discussion about wetland mitigation monitoring which takes place. Monomoy Farm is discussed as having this type of monitoring.

To wrap up the discussion, the review process will be handled as a quick review, review by the Committee of Three, as well as referral to the Planning Board. Definitions will be worked on as far as the Planning Board bumping back an Application, as well as thresholds for waivers.

Bruce talks about water controlled structures as far as quick reviews versus exemptions. Charlotte refers to the bridges on the Dubin property as far as qualifying for a quick review. Cynthia states that if it was just a replacement of the bridges, Dubin might have qualified for a quick review. Cynthia refers to the bringing in or taking out of fill and states that there should be thresholds in place.

Fee Schedules:

Cynthia refers to Applications for Subdivision, Site Plan, Wetlands, and Tree Cutting. We are charging full fees for each type of Permit. There is discussion about charging the major Application the prevailing fee, instead of charging multiple fees for Applications going on at the same time. Cynthia states this should be discussed with the Town Board, for instances when Applicants have multiple permits for the same activity.

Chapter 189 – Tree Cutting:

The Board talks about looking at different thresholds for taking down trees in relation to the acreage. Slopes are discussed. The triggering of SEQR is discussed. Cynthia asks Bruce for his input as well.

2. Next Meetings:

- Regular Meeting – November 4, 2009
- Work Session – November 18, 2009
- Joint Meeting – October 29, 2009

3. Comments From the Chair:

Scheduling of Site Visits:

- Paul Properties/Orchard Hill
- Rai/Zaslow

Cynthia states that the Board has two Applications before them for which they should make Site Visits on. Referring to Rai/Zaslow, Cynthia states that the Applicant is requesting to take down 10 or 15 trees around a tennis court. There is no wetland involved. Cynthia states that if the Board takes a look and the Application meets the criteria, they may go right to a Resolution and waive a Public Hearing. This is a type of Application that Bruce may be able to handle administratively.

Cynthia states that the other Application is the Paul Properties/Orchard Hill proposal for the harvesting of timber.

The Board discusses availability and decides to meet on Sunday, November 1st. Cynthia asks Bruce how his discussions went with Roland regarding this proposed Application. Bruce states that he spoke with Bruce Williamson about this Application. Bruce was under the impression that there was a State Law that superseded the Town Ordinance. That is incorrect. The purpose is to explain to Towns what the aim and goals of forestry with the expectation that they will get understanding and cooperation at the Town level for the review of this activity, in light of the fact that it is acceptable as they are proposing it with the DEC and DEP. The Applicant has the support of DEC and DEP to perform this activity. It is disappointing to the Applicant that there is not an Ordinance in place in the Town. Bruce states that he needs to pull out the project file for the Haussermann property to see how that was handled. Bruce states that sometimes the process gets in the way of the activity. Bruce states that the Applicant wants to begin this activity when the ground is frozen. Bruce states that the Watershed Agricultural Council represents themselves as being the liaison between farming operations, local communities, DEP and DEC. There is a very good working relationship there. Bruce states that this is not an activity that we are familiar with. It is a sanctioned activity. Bruce states that if the Board feels differently they need to take it up with DEP and DEC.

Sonja states that 90% of the whole site is steep slopes as well as large amounts of wetlands. The habitants as well as impacts are discussed.

Cynthia states that Michael Klemens advised her that this site has the most incredible vernal pools and limestone outcroppings that he has ever seen.

Bruce suggests Mr. Williamson come down and speak with the Board. Cynthia states that we should have someone come and speak about timber harvesting in general. Bernard asks how much input the DEP has into investigating this type of project. Bruce states that the DEP is not giving their approval project by project. DEP is giving their approval through the process that the Westchester Agricultural Council will oversee the project. Cynthia states that Andy Hubbard made a presentation before the Town Board in March of 2007. It was a long presentation on timber harvesting. Bernard states that he would like to look at the Planning Board Minutes from the Hausermann Project. He does not believe there were people at the Public Hearing that were in opposition of the project.

Dawn will call Rod Burgess to check availability for the November 1st Site Visit.

4. Resolution:

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