

North Salem Planning Board Minutes

January 20, 2010

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
Bruce Thompson, Building Inspector

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

Chairwoman Cynthia Curtis calls the January 20, 2010 North Salem Planning Board Meeting to order.

WORK SESSION:

1. Discussion Regarding Wetlands Law Revisions.

Cynthia states that having Bruce with us tonight will give us an opportunity for him to weigh in with his comments. At the last meeting while we were discussing having the Committee of Three, we dropped that idea for a couple of reasons. Cynthia states that for one, it did not really seem necessary, and the second reason is that we do not have a functioning CAC at this time. Cynthia states that she did not feel comfortable having language in the law referring to a group who may not participate. The Draft is now written with the same general overall concept. The quick and easy Wetland Permit Applications would be reviewed only by the Building Department; the regular Wetlands Permit Applications would be reviewed by the Building Department and Wetlands Inspector; and the major Wetland Permit Applications would be referred by the Wetlands Inspector to the Planning Board. Cynthia states that short of going through this latest Draft page by page, she thought that Bruce would like to provide the Board with his comments.

Bruce states that the Board is giving the Building Department a certain amount of discretion in regards to the issuance of Wetland Permits. We do not ever want to feel that our decisions are being made without the proper amount of thought and review. By the same token, the alternative is to put people through a much longer process which discourages Applicants from coming in to obtain the Permits they need in the first place. Bruce would like the Board to know that the Building Department takes this process very seriously. Bruce talks about processing Applications expeditiously depending on the individual circumstances, so people may get on with their projects. Bruce talks about multiple activities taking place on any given property, and states that once this takes place, an Applicant has to wait for each activity to be reviewed before going forward. Otherwise, it would be regarded as segmentation. Cynthia states that is if there will be a SEQR process. Cynthia refers to the Administrative Wetland Permits which would be reviewed by both the Building Department and Wetlands Inspector and confirms with Bruce that those Applicants would not go through SEQR. Cynthia talks about the Planning Board paying close attention to the various projects they review because they might be viewed as segmentation under SEQR. Cynthia is not sure if segmentation occurs under any other type of Permits. Bruce refers to several Wetland Applications going on at the same time for 193 Baxter Road. Bruce states that one had to do with the removal of a pump house in a wetlands, and the other had to do with moving the driveway entrance gate, which would involve disturbance in a controlled area. Then the same Applicant came in with a proposal to rebuild a stone wall which is located outside of a controlled area. The stone they wanted to use is located within a controlled area. That last action seemed to be a straight forward Application, but in Bruce's opinion, it is being held up pending the approval of the first

two Applications. Cynthia asks Bruce if Joe told him this is the process. Bruce states no, he thought that would be the case because of the way the reviews were going forward. Cynthia states that the Planning Board is only reviewing the WP09-06, which is for the removal of the pump house. Bruce states that we realized that when the Applicant submitted in 2006, it should have been combined with the 2004 Application, which would only require one Permit. By then we had already begun to review the 2006 Application. We thought it would be more complicated to join them at this point. When they came in for the stone wall, there would have been three separate Applications. The decision was made to combine the Application for the stone wall with the Application for the gate which would have been the 2004 Permit. Bruce talks about what would have been a better way to do this. Cynthia states that she would defer this situation to the Town Attorney. Cynthia talks about the various activities being totally separate. She did not have a problem with the Applicant coming in for separate Wetland Permits. Cynthia states that the WP09-06 had been referred to the Planning Board because it was part of a wetland of five acres or more. Cynthia could not think of any reason why the Planning Board would decide to combine the 2004 Application with the 2006 Application. Bruce states that the DEC wetland is hydrologically connected to the other one. If you go a step further there is an area of wetland that the DEC has not confirmed to have control over yet. Bruce refers to Salem Hunt where it was determined that an area was hydrologically connected to L-5 for which authority was exercised. Bruce states that Joe is sensitive to these situations. When it happens, the complexion of the Applications change dramatically. Cynthia states that the Town Attorney should be consulted. The basic question is that if there is one open Wetland Permit on a property, if someone comes in to open up a second Wetland Permit on the same property, how should we address that? Should we force the Applicant to have one Wetland Permit, or may they stand alone as two separate Permits. Cynthia states that the term segmentation is only applicable under SEQR. Cynthia will check with Roland. It seems to her that if there were two proposed Administrative Wetland Permits that are not subject to SEQR, she does not believe segmentation could be brought into the picture. Cynthia talks about the Planning Board doing SEQR on an Application, and asks if they are obligated to bring in an Administrative Permit in order to pull the two Applications together. Cynthia states again, she will ask Roland.

Robert talks about situations when someone has a large piece of property, such as Dubin, where there may be a request for a Permit for one side of the property, as well as a Permit for another side of the property. Cynthia states that Dubin is not a good example because that is all connected. Robert states it could be anywhere, such as Stanton, or Colley. Bruce refers to the Abrams property on Mills Road, and states they have two Applications going on. Cynthia asks Bruce if those wetlands are connected. Bruce states no. Gary asks for clarification. Cynthia talks about one of these Permits coming to the Planning Board for which they will be doing SEQR, and whether we are we obligated to bring the two Permits together, or may they run separately, as is the case now with the Wetland Permit Applications for 193 Baxter Road. Gary asks don't we want them to be able to run separately? Cynthia states yes, but that is a legal question. Sonja states that if SEQR is involved, then both Applications should be considered treated separately. Cynthia asks how we define the action. Gary states that Joe should determine if the wetlands are the same. Cynthia states that the 2004 Application started a few years ago and it was running as an Administrative Permit. Now the 2006 Application has been referred to the Board. Why would the Board go digging to see if the other Wetland Permit on the property is connected or not? Sonja states that SEQR requires looking at the whole picture.

The Board discusses what they will do with regards to 193 Baxter Road. Bruce confirms that it has not been decided by the DEC that the two wetlands are connected. We don't have a definitive answer. The responsibilities under SEQR are discussed. Bruce states that DEC revised their maps in 2003 and sent out notices to individuals to notify them that a portion of their property is part of a DEC wetlands. People had a chance to comment about it. Bruce states that it is a large step to be taking on the part of the DEC without going through the process they have abided by in the past. It certainly doesn't seem reasonable to be testing with someone who has an Application to build a stone wall. Cynthia states that as early as possible in the process it would be up to Bruce and Joe to decide whether or not a separate Wetlands Permit is related to the

first one. Cynthia states with 193 Baxter Road, the Board is ready to open the Public Hearing. Bruce states that each time this situation has come up, it is for the larger property owner who is represented by landscape architects. There are huge gaps in time during which Applications come in, when owners sometimes change their minds. All of a sudden the process is slowed down even more. It is very frustrating. Referring to 193 Baxter Road, Bruce states that he spoke with Dave McAdoo and suggested he speak with the owner regarding presenting a Plan to go forward with now.

The Board begins to discuss the latest Draft Chapter 107 Amendments.

Referring to 107-5, Prohibited, regulated and excluded activities on Page 6, Cynthia confirms there are no questions on A. Charlotte asks if the size of the buffer area should be stated. Cynthia states that generally the buffer is 100 feet, and is specified in the definitions.

On Page 7, the excluded activities are discussed. Gary asks if we allow trapping in this Town. Robert states that there are people who trap in Town. Bruce refers to the Paul Properties Timber Harvesting Project on Hardscrabble Road and states that property has beavers on the eastern end. The dams backed up the water from one pond to the next, which has caused trees to die. The proposed remedy was to trap the beavers. Sonja talks about people having a specific purpose for the trapping, and suggests changing the language in C(1)(a), by taking out the word "or", and adding in a comma. There are instances where animals are trapped to be killed, or instances where animals are trapped to be moved. Gary refers to C(1)(a) and asks what "natural products" would be. The Board discusses fisherman taking away all of the remnants from their catch, and not leaving anything behind. Cynthia will contact the DEC to confirm, as this language is also in their regulations. Cynthia refers to C(1)(b), which talks about the activities of farmers. This wording is also in the DEC wetland regulations. There is language about selectively cutting timber in C(1)(b), which is also discussed below in (j). Cynthia asks if we are being repetitive. The board discusses the growing of agricultural products. Cynthia states that horses may graze in wetlands. Charlotte asks if (C)(1)(b) refers to farmers, and (j) refers to everyone else. Gary states that (b) talks about the activities of farmers and other landowners. Cynthia asks Bruce if he has a concern with (C)(1)(b). The Board decides to take "selectively cutting timber" out of C(1)(b), as it is covered in (j). Cynthia asks Bruce if he has a concern with (C)(1)(b). Bruce states that it is long, but he will be able to work with it. Robert discusses the filing of notice of intent referred to in (b). Robert confirms that refers to farmers filing a notice of intent stating the activities they will be doing in the wetlands. Bruce states that he has received letters from individuals in the past from people doing such activities. There is a discussion about types of work, such as plowing, seeding, or fencing taking place in wetlands. For work such as plowing, the letter may state that it would be done annually. Robert states that process would be a good way for the Building Department to be kept advised of what is happening. Bruce states that his Department encourages people to contact them. On Page 7, (C)(1)(c) is discussed. Bruce refers to well lines that run through a controlled area and asks the Board what is the appropriate amount of review that should be done when the lines need to be replaced. Cynthia states that is covered under minor wetlands activities.

Bruce confirms there is a new definition for Water Controlled Structures.

Referring to 107-6, Application for permit; determination on Page 8 is discussed. Cynthia states that this process begins in the Building Department with basic forms. The waiver process is listed on Page 9 (A)(7). Cynthia states that when an Application comes in it goes to the Building Inspector and the Wetlands Inspector for the initial review. At that point a decision would be made as to whether it is a Minor Wetlands Permit, a Full Wetlands Permit, or a Wetlands Permit that would be referred to the Planning Board. Cynthia states that under B(1)(a), we listed examples of a Minor Wetland Permit. Cynthia refers to Page 10 and states that we haven't defined "minor". Cynthia asks Bruce if he is comfortable with the five examples on Page 10. Bruce states yes. Bruce talks about 10 feet into the disturbed area being considered minor. Robert talks about the

Peach Lake residents replacing decks and asks if variances would be needed if they are next to the water. Cynthia talks about the residents going through a Full Wetlands Permit which will pull in the Wetlands Inspector for review. Bruce talks about people replacing footings versus people expanding a deck or replacing a deck. Once an old deck comes down a regular permit would be required. Cynthia asks why (3) on Page 10 doesn't have the caveat "so long as the addition is not in excess of 500 square feet and located no closer than 50 linear feet to a wetland". The Board discusses combining both (3) and (4). The words "provided that the footprint area of less than 500 square feet and located no closer than 50 linear feet to a wetland or watercourse", will be added at the end of (3). Full Wetland Permits on Page 10, (2)(a – c) are discussed. The Board talks about whether examples should be spelled out further under (c). The Board decides to take (c)(1-3) out on Page 10.

Cynthia refers to Page 11, (3)(a) and asks why isn't it the Wetlands Inspector and/or the Building Inspector, and how do they make a determination that the activity could have a significant adverse impact on a controlled area. Cynthia states a concern with the language. Sonja states that the Wetlands Inspector may notice certain wetland habitats that could indicate that the impact would be significant and may be referred to the Planning Board. Cynthia states that the words "determines could have a significant adverse impact" are SEQR words. Cynthia talks about wording this section differently. Gary asks if (3)(a)(3) is basically anything that is not in (1) or (2). Cynthia states no. We are deciding what a (1) is, and what a (3) is, then (2) would be everything that does not meet (1) or (3). Cynthia states that we are defining the criteria that kicks it over to the Planning Board. The words "Wetlands Inspector" will be taken out of Page 11(3)(a)(1). The word "potential" will be taken out of (3)(a)(3). Cynthia states that she created a new Wetlands Application for which the Wetlands Inspector will advise Applicants which materials are required.

Referring to 107-7, Permit procedures are discussed on Page 12, specifically A(1)(h). Cynthia asks if fences are referred to earlier in the document. There is a discussion about the installation of a fence dug by hand in a controlled area being considered a Minor Permit. Charlotte thought that if someone has a farm and would like to install post-in-rail fencing in a wetland they would be allowed to use a machine because it is the activity of a farm for the grazing of animals. Bruce states that the DEC is very strict with machine usage in wetlands. The holes have to be dug by hand. Robert will forward a letter to Bruce regarding machine usage, and states that the requirements may have changed since he received it. Cynthia states that if someone needs to use a machine, and it is not a Minor Permit, it is a Regular Permit for which a full procedure would be required. There is a discussion about people being excluded from the Wetlands Law altogether because they are a farm. Bruce states that it is his understanding that the DEC does not allow the use of machines, even for farms. On Page 12, 107-7 A(1) is discussed. Bruce suggests the words "meets all of the following" be added to the end of (1). The note on Page 12 under B(1) is discussed. In regards to the CAC, the word should be "comment" instead of "recommendation". The Wetlands Inspector makes a recommendation. On Page 13 (5) is discussed. The CAC will be taken out. On Page 13 C(1) is discussed as utilizing the new Planning Board Wetland Application Form. Bruce talks about Page 13 (5), and asks if there is a specific form. Cynthia states that in prior years, a copy of the actual Wetland Permit was circulated to all of the individuals listed. A copy of the Permit should remain going to the Town Clerk. Cynthia states that the Planning Board would like a copy only for the instances when they were part of the process. Cynthia asks Bruce if the Wetland Permit Approvals are currently being forwarded to the Town Clerk. Bruce will confirm with Janice. On Page 13 (5), the CAC will be taken out. Bruce confirms the written notification may be done electronically. On Page 12 B(1), and Page 13 C(1-3) the words "45 days" will be changed to "30 days".

Bruce talks about Applications which are supposed to include a Wetland Delineation verified by the Wetlands Inspector and states that no money is submitted initially. Money is not submitted to pay for the Wetland Inspector's field work. Cynthia talks about the field being verified after the Application has been submitted. Bruce states in that case a survey would not be needed. Applications on Page 8 are discussed. Cynthia suggests a Pre-Application be made in order for field work to be verified by the Wetlands Inspector. This

would include an escrow. That could be added to the Fee Schedule.

On Page 14 (4)(a-c) will be taken out regarding waiving of a Public Hearing. On Page 14 (5) is discussed in terms of “65 days”. Cynthia will confirm this language.

Maintenance Bonds are discussed on Page 14 (8). The note under (4)(b) will be taken out.

The note which refers to (A)(8) on Page 15 is discussed, and determined to be taken out. Cynthia will check with Roland regarding the note on Page 16.

Cynthia wraps up the discussion by stating a section regarding Pre-Applications for field verification will be added. Cynthia will speak with Roland regarding the note on Page 16. Cynthia will check the DEC regulations regarding machinery to be utilized by farming operations in wetlands.

Bruce discusses the duration of a Wetland Permit. Bruce states that a fee of \$100.00 is submitted for which a lot of involvement from the Building Department is received. Cynthia states that we need to add timeframes between the issuance of a Wetlands Permit and the closure of a Wetlands Permit. It is only good for one year with a one year renewal. Bruce talks about what constitutes closure. Cynthia states the issuance of a certificate of appropriateness would bring closure. Regarding fees, Cynthia states there may be people coming in for minor activities in the buffer for which the fees should be kept simple. Cynthia states that the issuance of a Wetlands Permit would require one inspection at the end. If further inspections are involved, maybe we should build in another fee. There is a discussion about changing the fee chapter in order to specify the number of inspections/fees that may occur before a Permit is signed off.

2. Discussion of Planning/Building Department Goals for 2010:

- Steep Slope Legislation
- Revised Wetland Regulations
- GIS Mapping
- Fee Schedule Revisions Re: Joint Applications
- Tree Harvesting Legislation
- Zoning Code Revisions:
 1. Definitions
 2. Signs
 3. Merger
 4. Fence and Yard Exceptions, etc.
- Septic Model Ordinance

Cynthia states that she has monthly meetings with Maureen and Bruce to review issues of common concerns.

Last year the Planning Board completed the Steep Slopes Draft. The Town Board opened and kept open the Public Hearing. One of the attorneys for a property owner raised questions with the way SEQR questions were dealt with. That issue has been referred to the Town Attorney who has asked that MDRA also take a look at it. We are waiting for a decision as to whether the SEQR needs to be modified. Once a response has been given, the Town Board will then continue the Public Hearing. We will see whether they send the Draft back to the Planning Board for revisions or vote on it.

Cynthia states that we hope to conclude the Wetlands Law Revisions this year, and are on track to do that.

Cynthia states that we will be doing GIS Mapping this year, and have a new mapping company for the Town.

The person who we will be working with worked at the old mapping company and keyed in all of the zoning. Karen Futia is handling the arrangements.

Cynthia states that we have talked about revising the fee schedule in regards to multiple permits so that we are not charging multiple fees. Cynthia will raise this with the Town Board. Bernard agrees that multiple fees should not be collected, as it is a burden on small homeowners. Collecting fees for minor activities is discussed.

In regards to the tree harvesting legislation, Cynthia would like to have someone come in and assist the Town with an Ordinance. Sonja states that we had talked about revisions to Chapter 189 and asks if tree harvesting would be separate. Cynthia states that it may stand alone. Cynthia would like to see sand and gravel taken away from trees. The Board discusses having one designated area in the Ordinance.

Cynthia states that we started working on the Zoning Code Revisions. The Sign Revisions are almost done. The septic model ordinance has to be adopted by 2011.

Cynthia would like Planning Board input as to how they would like to move forward. Bernard would like to discuss the tree harvesting. Cynthia will call Andy Hubbard about coming in to speak with the Board.

Bruce states that last Thursday he visited the site of the Paul Properties Tree Harvesting Project on Hardscrabble Road. Bruce spent 2 ½ hours on the Site to see how they will go forward. Bruce is scheduled to go out to the Site tomorrow to see the furthest vernal pool. Bruce states that the crossings are going in today in the landing area. Bruce states that if they walk their talk, everything will be fine. Bruce states that we will start to see logging trucks on Hardscrabble Road.

Cynthia asks what is happening with the composting of manure at the O'Donahue property. Cynthia asks why they didn't receive a Special Permit from the Town Board. Cynthia states that she and Bruce talked about this and he was going to call Roland. Bruce states that they don't have a Special Permit because of the farm. Cynthia states that if they are keeping horses they still need a Special Permit. Bruce states that yes, if they are keeping horses they need a Special Permit. Cynthia states that there are no exemptions from Special Permits for a farm.

There is a discussion about all Towns writing septic models by 2011. Forms are discussed.

3. Next Meetings:

- Regular Meeting – February 3, 2010
- Work Session – February 17, 2010

4. Comments from the Chair:

Cynthia states that there will be a Town Open House Day on Saturday, February 6th between 10:00 a.m. and 2:00 p.m. Postcards will be going out next week.

5. Resolution:

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