

## North Salem Planning Board Minutes

April 21, 2010

7:30 PM – Annex

**PRESENT:**            **Cynthia Curtis, Chairwoman**  
                         **Charlotte Harris, Board Member**  
                         **Robert Tompkins, Board Member**  
                         **Gary Jacobi, Board Member**  
                         **Frank Annunziata, Town Engineer**

**ABSENT:**            **Roland A. Baroni, Town Attorney - not required to attend**  
                         **Bernard Sweeney, Board Member**

**Chairwoman Cynthia Curtis calls the April 21, 2010 North Salem Planning Board Meeting to order.**

### **WORK SESSION:**

#### **1. Stormwater Law:**

- Consider Code Amendment Regarding Phosphorous Reduction Policy

Cynthia states that the main item tonight is phosphorous compliance which came about because of the Salem Hunt matters which were brought to our attention in a letter by the Attorney General. The Board has taken the position of applying this reduction of phosphorous load to every Applicant that comes before us, but we never quantified it. Cynthia states that two years ago she spoke with then Supervisor Greenwood about quantifying it. Mr. Greenwood wanted to think about it more. Frank Annunziata, our Town Engineer began to work on quantifying it. Due to other priorities at the time, this never moved from the first phase. The Planning Board has continued on their end to request Applicants to comply. This has become an issue with a few of the Applicants who have questioned it. Cynthia spoke with the Town Board and they want to see it quantified. The Board will be having discussions on an Amendment to the Code for the Town Board to consider. Cynthia states that Frank, after having discussions with Supervisor Lucas, has drafted something for the Board to discuss. If the Board embraces it, MDRA will write the Amendment to the Stormwater Section of the Code. Cynthia states that she believes it has worked out better to wait the two years, as the Board has learned a lot, having received a couple of Applications in order to see what will and will not work.

Frank states that he prepared the document as a starting point in order to get the conversation going. Even though he prepared it a little over a month ago, when reviewing it today, there are items that he would change. Frank states that one of the main issues going forward is to decide which projects we will catch in the net. The other main issue is once a project is regulated, how much of that area of the property will the regulations be applied to. Will the regulations apply to the area of development, or the total property? Frank took a look at Salem Hunt and is not sure a determination had been made. Frank states that the first threshold referred to in the bullet in the second paragraph would be one acre of disturbance. Frank states that the one acre of disturbance is a requirement the State uses to ask for post-construction practices, not just practices during construction. These practices could include dry-wells, treatment ponds, or basins. The Town Local Law allows flexibility between 5,000 square feet of disturbance and one acre of 43,000 square feet, if the Board decides to require post-construction practices. Frank states that a Stormwater Pollution Prevention Plan (SWPPP) addresses how to deal with erosion and sedimentation control issues during construction, but doesn't require anything after construction. Frank states that the one acre requirement is a starting point. Frank states that going from there, he tried to look at basic types of Applications the Board might have as far as which to regulate and which not to regulate. The first breakout should be between residential projects and

non-residential projects. Frank gives an example of a project where there is more than one acre of disturbance and an increase in impervious coverage, and states the Board may want to consider regulating it. Frank refers to Peach Lake Commons not only complying with the existing State requirements, but also reduce the total discharge of phosphorous on the property.

Frank states that the second breakout would be residential subdivisions. Frank talks about two options. The first would be where a right-of-way is being created for interior access to the property such as the road in, and lots off of it. If someone is putting a road in and subdividing lots, that would trigger the total disturbance requirement, and require post-construction practices. A similar type of subdivision without a right-of-way with access through frontage or easements would not be big enough for enhanced requirements. Frank refers to the LP Partners Subdivision where there is access off an existing road. There are also smaller subdivisions where a common driveway might be able to go in without creating a right-of-way. Cynthia asks if Frank is talking about providing frontage or the extra width of the driveway or road when he refers to a right-of-way. Frank states he is talking about providing frontage. Salem Hills Subdivision is mentioned. Robert states there are a lot of long rectangular lots in this Town historically.

Frank states that there may be situations where one project would be regulated and another wouldn't. They may look the same. One may be in a right-of-way and one may not. Cynthia states that someone may have a 50 acre piece of property with many driveways with a tremendous amount of disturbance which would receive a pass from the way this is written. From a land disturbance standpoint, we may want to pick up a situation like that. Cynthia states that to the other extreme someone may put in a small road with a cluster development. In those circumstances we would want to focus in on the disturbed areas and give a pass for everything that is left open and undisturbed. If this is a starting point we may want to factor in other items that would trigger it one way or the other. Cynthia refers to Salem Hunt and states that they are proposing to disturb the majority of the property even though some areas will be left undisturbed. Looking at the piece of property as a whole, approximately 50 or 60% is proposed to be disturbed. Frank is not sure, but he thought the calculation of the 19% reduction requirement in phosphorous was based on the whole lot. It now looks like most of their calculations are based on approximately 26 acres, which would only be the disturbed areas.

Frank talks about the maximum zoning allowance for residential lot development. The Town has a maximum development coverage requirement. Frank gives an example of an individual lot proposed to build out more than 200% of the maximum development requirement being caught in the net, even though it is a single-family lot. Under certain circumstances most single-family lots themselves will not be required to comply. Cynthia states that would be under the jurisdiction of the Building Inspector, as those specific applications do not come before the Planning Board.

Frank talks about regulating specific projects and what part of a lot should be required to reduce phosphorous to a 19% reduction. Frank states that for Salem Hunt, it is not clear whether their calculations are based on a 19% reduction from the entire property, or just from the disturbed areas. Frank talks about the Town moving towards a 19% reduction as a whole.

Cynthia states she raised a question with Tim Allen regarding the LP Partners 2-lot Subdivision being proposed on a large piece of property. Cynthia spoke with Mr. Allen about reducing the phosphorous on the disturbed areas on the individual lots. Mr. Allen stated he would have to introduce additional practices in order to accomplish the reduction. Mr. Allen did not seem to act as if it was an unreasonable request. Cynthia asks if requiring a 19% reduction of disturbed area in general for subdivisions is asking a lot. Frank states that it will require more review, and will depend a lot on all of the factors. Frank states that even if Applicant's use practices that are acceptable by the State Manual, are part of the State General Permit, and everything is done the way the Codes are now, there may be an increase or decrease in phosphorous.

Cynthia talks about using the threshold for projects that are not minor subdivisions which would be 3 lots or more. Then 3 lot subdivisions being proposed would receive a pass. The disturbance needs to be looked at as well even for minor subdivisions. Cynthia talks about minor subdivisions receiving a pass unless they are proposing a road with a right-of-way along with a certain amount of disturbance. We could then say that anyone who doesn't qualify for a minor subdivision would have to comply. Cynthia states that a clarification from Salem Hunt should be obtained. Cynthia thought that Salem Hunt had prepared their calculations based on the whole lot. Gary states that it does not make sense to include the whole lot. Cynthia states that the entire parcel is contributing to the problem. Gary talks about Applicants reducing something they are not touching. Robert asks if this is all about not building an infiltration plant. It is going on the backs of the individual towns. Cynthia talks about minor subdivisions receiving a pass unless there is a major disturbance, as well as calculations being based on the disturbed areas. Charlotte states that makes sense. Robert states that would be the least erroneous. Cynthia refers to Site Plans with buildings, parking lots, and roads that are part of the calculation. Cynthia states that there may be difficulties with pre-existing Site Plans that come over for amendments, especially with the acre or more threshold of disturbance. A Site Plan may come in for a pre-existing building on a small lot, such as Salem Center for example, adding on a small wing, and a few parking spaces. This may not trigger the one acre threshold. Maximum development coverage is discussed. Cynthia asks if farms receive a pass from stormwater. Frank does not recall. Cynthia reads the exemptions in the Town Stormwater Law and states that tilling soil for planting, or tilling to create crop land or pastures, as far as farming or agricultural operations are exempt. All other aspects of farming operations are regulated. Cynthia asks if a lot of farms come in for Stormwater Permits. Gary states that they may not know the requirement. Frank talks about the larger farms coming in.

There is discussion about adding in language in the first bullet stating that major subdivisions with more than three lots are subject to the regulations. Minor subdivisions would be exempt unless there is a certain amount of disturbance, which has yet to be determined. Frank also talks about road access disturbance in the right-of-way. There is a discussion about the percentages of disturbance. Cynthia talks about following the Code and the maximum development coverage. Cynthia refers to a three lot subdivision with four acre lots, the maximum development coverage would be 20%, and the maximum building coverage would be 10%. Cynthia refers to subdivisions and states that the Board is not advised about tennis courts for example. There is discussion about the Building Inspector seeing further disturbance. There is a discussion about basing the percentage on the building envelope which would cover it all from the beginning. Enforcing is discussed. Minor subdivisions receiving a pass unless the building envelope exceeds 50% or more of the lot is discussed. Building envelopes for the proposed minor LP Partners Subdivision is discussed.

As far as Site Plans, all will need to comply if over one acre of disturbance for a 19% reduction of phosphorous in disturbed areas.

There is discussion about individual lots for which a building envelope will be created after the date of the adoption of this Amendment requiring compliance. A pass will be given if tilling soil for farming. Having a higher threshold of acreage is discussed. The calculation process is discussed, as well as the engineering review costs. Gary states that an acre is a large area. Calculating impervious surface versus disturbance is discussed. Cynthia asks if under State Law anyone is looking at phosphorous reductions. Frank talks about the retro-fit program and sewage treatment plant reductions. Cynthia asks if it makes sense to factor in newly impervious surfaces. Frank states yes.

Frank will prepare a revised Amendment for the next Work Session. Both MDRA and Bruce will be asked to weigh in with comments.

### **3. Comments from the Chair:**

There is a discussion about what time the crane will be up for the T-Mobile Northeast LLC Communications

visual test scheduled for Saturday, April 24<sup>th</sup> at the Route 22 site. Robert will be at the site at 7:30 a.m. to meet with the project engineer. Robert states that John Caralyus has been getting the word out to the neighbors. Cynthia states that people should follow the guidelines using a 50 mm equivalent when taking pictures. Cynthia talks with Robert about shots being taken along Titicus Road where the crane will be seen.

## **2. Discussion Regarding Renewal of Conditional Use and Site Development Plan Permits**

Cynthia states that there has been a request for the renewal of the Conditional Use and Site Development Plan Approval Permit for the cell tower on Sun Valley Drive in Croton Falls. It has been almost 10 years since the initial Permit was issued. Cynthia spoke with Roland, Will at MDRA and Bruce and would like the Board to focus renewal requests based on the specifics of better technology rather than providing a blanket renewal. The use of whips versus towers are discussed as being less visible. Cynthia states we will be prepared to ask the proper questions, even though we may receive quick answers.

## **3. Next Meetings:**

- Regular Meeting – May 5, 2010
- Work Session – May 19, 2010

## **4. Resolution:**

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