

North Salem Planning Board Minutes

November 17, 2010

7:30 PM – Annex

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

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

Chairwoman Cynthia Curtis calls the November 17, 2010 North Salem Planning Board Meeting to order.

WORK SESSION:

1. Discussion Regarding Chapter 89 Fill, and Chapter 189 Sand & Gravel/Tree Removal

Cynthia states that the Town Board is anxious for our Board to attack Chapter 189 because of the Freshwater Wetlands Law with the excavation of ponds and handling of fill where multiple permits come into play.

Cynthia would like to bring the Board up to date and states the Town Board passed the Legislation for the Outdoor Dining. The Town Board had a Public Hearing on the Freshwater Wetlands. There were no comments, and the Public Hearing was closed.

Cynthia states that for many years we had Chapter 189 which is for Excavation, Fill, and Tree Slashing Permits. The way the Chapter is written, if someone were to bring in a wheelbarrow of fill, a Fill Permit would be required. It is not very user friendly. A few years ago we had a problem in this Town when someone brought in unacceptable fill consisting of construction debris. The DEP came down on the property owner, which made the Town rethink the Fill Law, and the need to regulate the quality of the fill being brought in. Instead of going into Chapter 189 and adding in language regarding the quality of the fill being brought in, for which the Building Inspector would have obtained certification, it was decided to write a separate Chapter called the Fill Chapter where the Building Inspector will allow a required quantity of certain types of fill, such as construction fill for septics and road material, as well as some of the materials for the horse farms. When the quantities are over a certain amount, the Building Inspector would require certification that the fill is clean and in accordance with State Regulations. In recent years, the Building Inspector has been processing Fill Permits, not realizing that Chapter 189 requires Applicants to come before the Planning Board when bringing in fill. Cynthia states she has spoken with the Building Inspector, and the Board may agree, that we do not want all of the Applicants coming over to us. Robert asks why it would ever be necessary. Cynthia states the reason we have a Fill Law in the first place because there are occasions when people totally change the character of their property by bringing in truck loads of fill which causes a change in grades. It may not be a problem for an owner to design their property that way, but if large quantities of fill are brought in without stabilizing an area, or the installation of fill takes place on steep slopes, it could result in erosion that would have bad affects. Robert talks about this starting with the medical waste. Cynthia states it actually started with Dansker and the Turkey Farm, and the activities which happened on both of those sites. Dansker was selling his rock when I-684 was being constructed. That is when the Town first developed this Ordinance for the excavation of fill. On the Turkey Farm a bunch of trees were slashed which caused the side of a mountain to wash out. More fill was brought in. A neighbor had a beautiful swimming pool in their back

yard. After the fill was brought in, and when heavy rains came, all the fill went into the pool and totally destroyed it. Robert states that also happened to Tommy Mottola when he lived in Bedford. A neighbor clear cut a 60 acre parcel on the top of a hill. One of the residents who lived at the foot of the hill came back from vacation to find the neighbors fill in both their pool and house.

Cynthia states it is our goal to take the Fill Law and certain parts and pieces of Chapter 189 that deal with fill and excavation, and put them together into a revitalized Chapter 89 that basically follows some of the criteria of Chapter 89 in that the Building Inspector should handle the routine Applications. If there are cases where certain thresholds are met, and there will be major excavation requiring fill, those Applications will come over to the Planning Board. Robert asks what the specific qualifications would be. Cynthia states the Board should look at SEQR when determining the thresholds, as well as any other thresholds we feel would be appropriate. Cynthia states that if a resident is doing ordinary landscaping, and the quantities are small enough, it would be handled in the Building Inspector's Office. If the threshold is minimal, the resident would be exempt. If an action triggers enough fill being brought in, we would be concerned as to whether the top soil is certified and determined to be clean. For major changes to properties, where slopes are involved and grades would be changed, we would want a threshold in place so those Applicants would come over to us. Robert would assume there would be a volume requirement. Cynthia states that currently 1,000 cubic yards triggers the reporting of whether or not the fill is clean. It is 250 cubic yards or less, nothing needs to be done. Robert states these amounts may be fine for small lots. For someone with 200 acres, 1,000 cubic yards is nothing.

Cynthia refers to Duncan Dayton working on his barn. He brought in huge amounts of top soil which was spread thin. The Town wanted to make sure the fill was clean. There was no change in grade.

Cynthia refers to Westchester Exceptional Children's School (WEC) and states they did work there that is unfinished on a steep slope. They should have come before the Planning Board, or the Building Inspector should have told them they had to finish. Given the opportunity, the Planning Board may have requested terracing. There is a discussion about WEC wanting more of a flat area at the top. There is a discussion about what type of fill was brought in and who brought the fill in.

Cynthia refers to the permit process in Chapter 89. The chapter states that this subsection shall not be applicable to projects where fill quantities will not exceed 1,000 cubic yards or where the fill material consists solely of road base, trench backfill, sub-base bedding, trench material and bedding, run-of-bank fill for septic, sand for concrete or bedding materials and dust prevention materials used for horse riding rinks and paddocks or other commonly used materials for construction, provided that certification of the material's compliance to Part 360 is provided to the landowner by the supplier and prior notification is given to the Building Inspector. Cynthia states in general this sounds good. There are weaknesses because the language does not tie in to bringing in fill to the actual project that it should be intended for. If someone is bringing in road base, trench back fill, or sub-base bedding, that would be appropriate materials for the building of a driveway or a road. If someone is bringing in old chopped up road base from someone else and dumping it on their property, that is a different matter. Cynthia does not have a problem giving a pass to people bringing in materials for the construction of a road, driveway, septic, or paddocks. Cynthia states the 1,000 cubic yards is a good threshold. Robert would assume we need to tie the quality with the acreage. Robert states he would not bring in fill that was not good. Cynthia asks the Board if they agree that there should be two thresholds as was done in the Wetlands Law. Applications defined as a minor activity would be handled administratively, or, depending on the criteria, referred to us. The Board agrees. Cynthia states the Board may want MDRA to come in with a few suggested thresholds as to what will trigger a referral. Charlotte suggests a percentage of the acreage. Cynthia states it depends on how the fill is being used such as creating a paddock, or the spreading of top soil. If someone is doing a project that will change grades, we then need to think about thresholds such as quantities and the resultant. Cynthia talks about someone filling a hole and states that the Building Inspector should be able to sign off on that, as long as the fill is clean. If someone is changing the

grade and will end up with grades with 10% to 20% slopes, those individuals should come before the Planning Board so we may make sure there is proper stabilization. Cynthia asks Sonja what she thinks. Sonja asks if the Board would want the fill material to be related to a certain use. Cynthia states yes. Sonja states we should define a certain degree of slope. Cynthia asks if someone has a hole on their property and they want to fill it in to level off their land, whether the Town needs to be concerned with the quality of the fill. Robert refers to organic fill and states he is aware of instances where people have filled up holes with manure. Over time, with frosts and breakdowns, it will turn to top soil. Nothing will grow in it for four or five years. Robert asks if that type of process would be eliminated as people have been doing it for a long time. Cynthia is not worried about manure, as it is handled by the Zoning Board of Appeals (ZBA). We are not expecting someone to bring in manure from someone else to be used as fill. If that happened, it would be handled by the Building Inspector. There is discussion about building language into the Law such as the non use of tree trunks and other items that will break down. Cynthia refers to Lost Pond Lane where a pond was filled with all of the trees that were slashed from the property. The Applicant came before the Planning Board and the Board wanted to know what happened to the pond that was on the property. The Applicant stated they cut down the trees and filled the pond with them. At that time, the Board was very concerned that the previous pond would collapse one day which is exactly what happened. The Board may want to come up with findings as far as what is suitable and not suitable for fill. Cynthia does not know if horse farms may be regulated, or if they may receive a pass. Cynthia states that Sonja may look into that. The way the Chapter is written right now, there is an implication to may make sure the materials are safe if they exceed 1,000 cubic yards. Robert states that it is a standard practice to spread manure and then plow it under. Cynthia is not sure if anyone is still doing that process in North Salem. Sonja talks about rewriting Chapter 89, bringing in language from Chapter 189 and states that one of the exemptions is in connection with Farming Operations. Cynthia states this issue really came to light when we realized that a lot of the topsoil that is available could be from old farms. Cynthia wants to clarify the exemptions, passes, and administrative permits so that if someone is bringing in bank-fill, it is being used for a septic, or if someone is bringing in road construction materials, it is being used for road construction. There is discussion about tightening that up so no one may bring in and stockpile materials to be used for something it is not intended for. Cynthia asks if the Board has any suggested thresholds for referrals that would come over to them. Cynthia states that she would be concerned if the intended finished slope is greater than 15%. There would have to be a certain area size, such as when we looked at the Steep Slopes Ordinance. People may then decide to have a 12% slope. Sonja will come up with sample thresholds. Charlotte states she did not get a chance to take a look at any of the other towns to see what they have and wonders if they have any criteria regarding slopes. Cynthia had difficulty finding regulations that other towns have regarding excavation and fill. Robert states that needs to be a quantity threshold with a relationship to acreage.

Cynthia discusses the tree slashing ordinance in relation to acreage. Cynthia states that one of the other towns does have a threshold for a number of trees allowed to be taken down per acre.

Sonja refers to Chapter 189 and states there is a longer list of exemptions that do not require a permit. Sonja would like to know if that should stay as is. Sonja states that activities that require a permit under the review of the Building Inspector would be referred to the Planning Board if over a certain threshold. There would also be exemptions administered by the Building Inspector. Cynthia states that Chapter 189(3)(d) is tricky as there is a connection to landscaping improvements on a lot where the area to be landscaped does not exceed 20% of the total lot area but in no event more than one acre provided that no fill is deposited or vegetation cleared within a controlled area of the wetlands. Cynthia states that if someone is doing normal landscaping around their house, it should be exempt. If someone has a ten acre piece of property and your landscaping improvements are going to be back in the distance, we would like to recommend that as landscaping improvements also. We need to come up with a quantitative threshold. Robert refers to Duncan Dayton and states when he bought his property Kessman had plants on the east side that were plowed. Those fields were reseeded. Cynthia states that drainage was put in. Robert states that the reason for the drainage was because

the water was coming off the hill and under the other side. Robert states that is a good example where someone could lose 1,000 yards in a day.

Sonja refers to the existing definitions in both Chapters 89 and 189. There are not many definitions in Chapter 89, primarily the word fill. Robert suggests a definition for clean fill be added. Cynthia states that the farming operation should be consistent. We are going to use the same definition used in the Wetlands Ordinance. Cynthia states the definition of “filling” is to deposit, place, replace or cover rock, gravel, sand, soil, or other natural deposits. Cynthia states the definition of “grading” is to alter or change the existing surface of land by such acts as excavating, ditching, leveling, smoothing, filling or otherwise altering, modifying, or reconfiguring the existing or natural contours of the land surface. Cynthia states the definition of “land excavation” is to remove, extract, move or relocate rock, gravel, sand, soil, or other natural deposits. Cynthia states the definition of “landscaping improvements” is any installation on an improved lot, within 100 feet of a dwelling only, of living plants (such as grass, ground cover, shrubs, vines, hedges or trees) and nonliving landscape material (such as rocks, pebbles, sand, mulch, walls, fences or decorative paving materials) and the slashing of trees in connection with such improvements. Cynthia states these definitions may be pulled apart and she is not sure if we will use the term landscaping improvements. Maybe we need to address what forms of excavation are acceptable, and what forms of fill are acceptable on an improved lot. Cynthia asks Sonja to give it a try using the same criteria we used for the Wetlands Ordinance, which provides a pass for simple projects. Cynthia states there are two ways of approaching the criteria for clean fill. If it is top soil we want to make sure it is cleaned of pesticides. Otherwise when we talk about clean fill we are talking about acceptable materials that are not construction debris.

Cynthia states that she spoke with Bruce and he would like to see two separate chapters instead of a combined chapter. There should be a provision for collecting one fee if multiple applications are being filed.

Cynthia refers to Chapter 189 and states she brought a few samples of ordinances with her tonight from Bedford, Lewisboro and Pound Ridge. Cynthia states that each town has elements in their ordinance that she likes. Gary asks if we currently have a tree slashing ordinance. Cynthia confirms yes, and states that if someone is taking down more than two trees, they need a permit, unless they are landscaping within 100 feet of their house. We had decided that if someone is not in wetlands, or on a steep slope, the Planning Board may waive part of its procedure so Applicants do not have to go through a Public Hearing. Gary asks why we need to change the ordinance. Cynthia states that a lot of people are avoiding the tree slashing permit process. If someone has 10 acres and they want to cut down 3 or 4 trees for firewood for their fireplace, why should they have to obtain a permit? Cynthia reads a portion of the Bedford Ordinance which states that if someone cuts down more than 10 trees on a 4 acre property a permit would be required. Cynthia goes over the criteria listed. Gary confirms that if someone wants to cut down one tree in Bedford over 18 inches wide, they would require a permit. In North Salem, if someone takes down more than two trees and they are not within 100 feet of their house, they would require a permit. Cynthia is not suggesting we follow Bedford’s Ordinance. Gary is not sure why we need to change our Ordinance. Cynthia states that cutting down two trees makes sense for someone with ¼, ½ or 1 acre of land. Gary talks about adding in language so that only one tree may be cut per acre. Sonja states that currently the law has six inches or more at breast height. Cynthia would like to let people take down two, three, or maybe four trees without requiring a permit. There is a discussion about the amount of trees based on the amount of acreage. Cynthia is not trying to tie down the number of trees at this point. She is trying to work on the concepts. We will then have Sonja prepare a draft for review. Cynthia states that an ordinance in one of the other towns has language regarding people taking down trees within so many feet of their neighbor’s property. Robert does not agree with that. Neither does Gary. Gary does not want to get into tree cutting envelopes. The Board agrees with the idea of being less restrictive. There is discussion about setting up a scenic road designation, such as on Baxter Road, in order to preserve specific trees. Bernard talks about not singling out specific roads. Cynthia is referring to Town right-of-ways. There is discussion about writing a regulation to help protect trees in those instances.

Robert states he would like to read the various sample ordinances Cynthia has provided tonight before continuing this discussion.

Sonja will move ahead with a draft for Chapter 89. Gary states we should keep it simple. Cynthia asks Sonja if she will be able to prepare a draft for the next meeting on December 1. Sonja does not believe that she will have enough time. The Board talks about changing their Meeting date from December 1st to the 8th to give Sonja more time. Cynthia states that no new applications came in this month.

2. Next Meetings:

- Regular Meeting – December 1, 2010 – changed to December 8, 2010
- Work Session – December 15, 2010 - canceled

3. Comments from the Chair:

Cynthia states that she had a meeting in March with Rich Morgante, the new owner of the Salem Hills (Gilport) Subdivision. Frank Annunziata attended this meeting. There are issues with drainage, private road, and driveways. Frank provided Mr. Morgante with a lot of suggestions. About a month ago, Mr. Morgante called Warren Lucas stating he didn't want to do any of the suggestions made by Frank. Cynthia asked Warren to suggest Mr. Morgante come back before the Planning Board. Before Mr. Morgante puts any more money into generating a new set of Plans for review, he would like to meet with the Board to talk one more time about where they are and where the potential problems are. Mr. Morgante had requested another meeting with Frank, and possibly MDRA. Cynthia advised Mr. Morgante to come to a Meeting when both Sonja and Frank could be with us. Cynthia states that we could do this either December 8, or December 15. Gary agrees that both Sonja and Frank should attend. The Board decides on December 8th. The Work Session for December 15th has been canceled.

4. Resolution:

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