

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

Cynthia states that tonight the Board will be discussing Chapter 89 Fill. Instead of the Board meeting next week to continue the discussion during their Work Session, this item will be put on the Regular Meeting and Work Session Agendas in January.

Cynthia is not sure to what extent the Board has had a chance to look at the first draft. Cynthia states MDRA did wonderful job of keeping all of the old excavation and fill law, repackaging it, and yet maintaining in the second part all of the requirements for the Building Inspector as an administrative step to check out the quality of the fill coming in. Our Board will be reviewing the quantity, and the Building Inspector will oversee the quality of the fill with an Administrative Permit. Cynthia states the key item our Board has to decide on is what are the thresholds we want to subject people to for a Permit. In the old fill law there was a threshold of 250 cubic yards. If the yards were less than that, certain documentation was not required regarding the quality of the fill. Cynthia refers to Page 4 of the draft and states there is a blank where language needs to be added in. Cynthia states that when she had her swimming pool built, she was told that all of the fill was taken out of the hole and an area of her property was re-graded. For an ordinary 20 x 40 foot swimming pool there would be approximately 185 cubic yards removed. Cynthia states that would be a threshold she would be concerned with if a neighbor were to remove and re-grade a similar amount. Cynthia states the Board does not want to go higher than 250 cubic yards and states maybe we want to pull that number back to 200 cubic yards.

Cynthia states that Frank Annunziata from Hahn is here with us tonight and the Board may ask his opinion. Cynthia states that we are talking about regulating people who are bringing in fill or excavating outside of a building permit, road construction, site plan or subdivision. Cynthia asks Frank to help the Board visualize what 250 cubic yards would be. Frank states that the area where individuals are applying the fill is important, such as someone spreading top soil over an entire yard. Cynthia refers to individuals meeting the threshold for spreading top soil. When those individuals are at the Pre-Application stage, they would be given an administrative permit. If the grade and look will be changed, they will be required to go before the Board for a full permit process. Frank talks about qualifiers being decided upon to filter out individuals who are not changing the grade by one or two feet. Sonja states that at this point the qualifier would be above a certain amount of cubic yards. If the area to be disturbed was not greater than 5,000 square feet, the Board would not be involved. If the area to be disturbed was greater than 5,000 square feet, the Applicant would then come before the Board. Cynthia talks about the size of slopes not exceeding certain amounts. Cynthia states that the Board is trying to come up with thresholds which would trigger a permit process. Frank asks the Board if they are mainly concerned with appearances or disturbances. Cynthia states that disturbances and stabilization are a main concern. Sonja refers to an instance that had been discussed at a prior Meeting where the materials utilized almost caused a landslide. Cynthia states there are instances when a property owner works close to their neighbor's property line. Frank talks about having a grade differential factored in for the impacts. Cynthia asks if the controls should be built in or let that be part of the permit process. Frank has not read the law, but it sounds like the Board is aiming at adjusting radical changes that could affect other items such as the aesthetics from adjacent properties or unstable slopes. Cynthia states that we have a Chapter 189 fill law now that has no threshold. Technically if someone were to bring in a wheelbarrow of dirt, they are required to come in for a permit. The laws were written because there were a few cases in Town where people were excavating, such as when I-684 went in. In another instance trees were slashed on a hill and everything moved. In another case, people dumped fill in their yard, the area was not stable, and the fill ended up in a swimming pool downhill. The law was written a long time ago. There was a case where the fill was construction debris. That is when the Town became concerned with what is being brought in. The Board is taking an opportunity to pull both Chapter 89 and Chapter 189 together to write something that makes sense. Cynthia states the Board is at the beginning stages of this draft.

Cynthia states that she started researching online and noticed the regulations that Briarcliff has. Frank states

that 250 cubic yards would be approximately 10 to 12 good size dump trucks. Robert states that 250 cubic yards may be sufficient for someone with a smaller yard. It would be a speck in many yards in Town. Cynthia talks about different thresholds for people building roads, such as Monomoy Farm, where the threshold was 1,000 cubic yards. Cynthia states there are no regulations for building a road. A driveway cut is obtained from the Superintendent of Highways. There is no building permit required for the construction of the road. If the threshold was exceeded, a permit would be required. Robert refers to Page 14 under exemptions and states that language should be added. Robert states that 14 pages later there is language stating “this section shall not apply”. Cynthia states this is the section about the quality of the fill. Robert states it should be the same for the quantity. Robert states that the quantity should depend on the acreage and zone.

Cynthia states that the Board will put this discussion aside for now and discuss the Salem Hills/Gilport Dev. Corp. Subdivision as the Applicant has arrived. The above discussion will be continued later on in the Minutes.

5. Salem Hills/Gilport Dev. Corp.: Peter Gregory (owner – Richard Morgante)
Residential Subdivision (location – Oak Ridge & Overlook)

- Project Overview Discussion

Cynthia states that we have Frank from Hahn here tonight, as well as Sonja from MDRA. We only have three Board Members. Cynthia states that we thought that last spring, we were moving in a direction, and anticipated a submittal. The Applicant has not come back in since then. Let’s use this time as an opportunity to go back and see where they are in the process, and ask the Board any questions they may have since they asked to meet with the Board. Cynthia states that she should be corrected if she is wrong, but she thought the Applicant was almost at the point where the lot counts were being firmed up, showing the slope analysis and layout, knowing full well that an open development area would be considered.

Peter Gregory refers to the last memo dated March, 2009. It was suggested at that time that we start to show what the improvements would be, as well as what the grading would entail, and how that would impact the sloped areas. Since our meeting last spring we have had an opportunity to prepare a sketch plan that shows the grading. We were able to clean up some of the irregularities with the configuration of the lots. Cynthia asks Mr. Gregory to put his Plan up for the Board to see. Mr. Gregory states that their entrance to the property remains the same. They have an access off Oak Ridge Road through a 50 foot wide strip. We also have access off of Overlook Road. There were concerns about the shapes of Lots 4 and 7. We have cleaned those lots up showing different lot lines. Mr. Gregory states that both accesses are being proposed as common driveways. Having the common driveway configuration will give us flexibility in meeting the minimum yard requirements for front yard setbacks. We have also prepared a chart that takes into consideration the bulk zoning requirements measuring the quantity of steep slopes on each lot. We are showing that each lot does conform. We will provide all of this information in our next submission. Mr. Gregory states that they have had an opportunity to meet with the Fire Department and have tried to incorporate some of their suggestions and recommendations. We are looking at providing a 16 foot wide access up to the house sites with three foot multiple curbs. We are providing access for 22 feet on both driveways coming into the house sites. Mr. Gregory states there is a concern about water supply to the property. Mr. Gregory states that we will bring in tankers to feed water to the property through a dry line. Mr. Gergory shows an area on the Plan they are working on with regards to providing better dimensions for vehicles to turn around. Mr. Gregory states they are at a point where they are looking to meet again with NYCDEP to discuss their stormwater mitigation. Mr. Gregory shows on the Plan where they are proposing forms of treatment taking advantage of infiltration. They are looking to do something on each lot at the source around the houses and driveways. We are also proposing a stormwater mitigation area down by the entrance which is similar to what had been proposed on

the previous Salem Hills Subdivision Plan. Mr. Gregory states that they will address the comments in the Memo. They do have profiles for the roadway. Mr. Gregory states that before submitting them to Mr. Annunziata for his conformance review, we would like to have a meeting with NYCDEP. We would also like to discuss our stormwater plan with NYCDEP. If we are on the same page we will make a complete submission to the Planning Board.

Cynthia asks Frank if the NYCDEP would be looking at the same thresholds as the Planning Board. Frank states yes. The regulations have been changed and certain aspects have been formalized where they had not been before, such as if there is more than 20% impervious area, a duplicate practice is required. Frank states that we don't enforce the NYCDEP regulations; we enforce the State's regulations, which have certain enhanced requirements. Cynthia refers to Peach Lake Commons and states they just finished with the NYCDEP and they had to make changes. Frank states that may be due to changes in regulations. Cynthia confirms with Frank that it makes sense for the Applicant to go to the NYCDEP before the Board looks at it. Mr. Gregory states that NYCDEP has been on the property to witness test holes. The Health Department has been on the property also regarding the septics. Mr. Gregory states that the septics are in the same locations that had been previously proposed. Mr. Gregory states that with this current configuration they have been able to demonstrate yard areas on Lots 4 and 7.

Cynthia asks if this is a case where there is one agreement where everyone is sharing all of the costs, or are we looking at two separate sets of homeowner's agreements or easements. Cynthia states there are two driveways to be shared, as well as stormwater to be maintained, and asks how that will be broken down. Mr. Gregory states that there will be a homeowner's association, maintenance agreements, and drainage agreements. Mr. Gregory is not clear on how that will all break down. Mr. Gregory states the attorney for the Project will be putting those documents together. Cynthia asks who will own the first portion of the driveway. Will that be on one individual lot, or on a common homeowner's lot? Mr. Gregory states they will be common. Mr. Gregory shows on the Plan which pieces will be commonly known. Cynthia confirms Mr. Gregory does not yet know if all will be one group or two separate groups. Sonja asks why the stormwater basin is not included. Mr. Gregory states that because of the configuration of the lots they did not create a separate dedicated parcel for the stormwater at this point. If we find it makes sense, then we will look into it.

Cynthia asks Roland if the Board is satisfied with the lot count and the Applicant goes to an open development area, will the Board be able to allow the Applicant to rearrange the lots so they make more functioning sense, such as give more land to a common ownership. Roland states yes. The idea of open development provides for more flexibility. Cynthia states there would not be a frontage problem because we would have determined that the lots work in our Zone. Roland asks Cynthia what doesn't make sense to her. Cynthia states that right now there are all of these long strips going over to the driveways, and part of the stormwater area will be on several lots. There will be cross easements. Cynthia talks about there being a larger homeowner's association lot which reduces the size and shape of the individual lots. Roland asks who would own the driveways. There would be no cross easements. There is a discussion about proving out the lots. Frank states it may be easier to have common easement responsibilities for the various lots. Roland asks Frank if he likes this idea. Frank states yes, somewhat. He sees it as an opportunity for more flexibility.

Sonja discusses the lot compliance. Cynthia states that once we know the eight lots will confirm to our zoning, and there will be an open development area, does it make sense to redesign the lots so they work a little better. Roland states that the Board should not confuse open development with a conservation subdivision. Roland states the Board is flexing frontage on a Town approved road. Roland does not know whether an open development area allows a change in the bulk requirement. Mr. Gregory states that when they eliminated the right-of-way with the Town road, that did demonstrate the frontage on the majority of the lots. Mr. Gregory states the house, septic, and well locations will remain the same.

Cynthia asks if Mr. Gregory needs anything else from the Board.

Mr. Gregory states he has heard what he needs to hear. He will obtain information on how the homeowner's association will work. Mr. Gregory will make a submittal specific to the review memo. Mr. Gregory will go meet with NYCDEP on the stormwater, as well as meet with the Health Department. Cynthia states that MDRA has been waiting for a response to their memo.

Frank talks about the meeting with the Fire Department in regards to showing a turn-around area on the Plans. Mr. Gregory will revise the Plan before responding to the MDRA Memo.

4. Continuation of Discussion Regarding Chapter 89 Fill, and Chapter 189 Sand & Gravel/Tree Removal

Cynthia states that Roland is here with us tonight. Do we have any questions for him regarding land excavation and fill laws? Cynthia states there are two choices of penalties for offenses listed on Page 16. Roland will take a look at that and provide his comments to the Board. Cynthia asks Sonja if she has any other questions for Roland. She does not.

Referring back to the Salem Hills/Gilport Development Corp. Subdivision discussion Cynthia states that the prior owner received preliminary approval and a negative declaration under SEQR. The new owners came in with eight lots instead of nine. They have made a sufficient argument that they held onto their preliminary approval. Our Board has stated that SEQR has to be revisited because of a combination of new regulations, as well as stormwater. Roland asks Cynthia if this is being revisited and the Applicant has to file a new EAF for circulation, or was it just supplemented? Cynthia states that a new EAF was filed along with a Final Application. Sonja states she has an addendum to the Full EAF. Roland states the Applicant supplemented their original EAF. Roland states the Board would supplement the environmental findings, not rescind it, but add to it. Roland states that new mitigation measures may be reissued, while carrying over the original EAF. Cynthia states that the record also shows that a Public Hearing will be held to discuss the changes.

Referring back to Chapters 89 and 189, Cynthia states that they only have three Board Members tonight, and this Law is very complicated. The Board should concentrate on their approach of what and why they want to regulate as far as quantities and extent. Cynthia states the Board is starting fresh. Cynthia states that we have done a good job with itemizing what we need to address as part of the permit process and what we want to end up with. Cynthia states the Board could use guidance from Frank as to whether 250 cubic yards is a reasonable number. Frank is not sure whether the Board wants to address items such as in the steep slopes law. Frank states there are a lot of ways to go with this depending on the Board's intentions. Frank refers to the thresholds and states that he agrees with the 250 cubic yards of fill. Cynthia talks about the exemptions and states that 250 cubic yards is a lot of fill. Robert states it is all relative to the size of the lot. Cynthia refers to a five or six acre lot and asks if Robert is stating that the allowed quantity be changed, or leave it at the 250 and see what happens when an Applicant comes before the Planning Board. Cynthia states that 250 cubic yards still creates a lot of concern even if the lot is large, especially if it is all dumped in one area, creating a slope. There may be a wall that a neighbor is looking at that was not there before. Robert states it is a drop in the bucket. He does not see it as a significant issue. Robert states that what is allowed on a ¼ acre lot shouldn't be the same as someone having a four acre lot. Robert states that farms are somewhat exempt. Robert does not know how many parcels are out there that may be affected by something like this. Robert finds the process extremely onerous, such as the application process. He is happy he has a farm. Robert states the Board needs to work on this law more. Robert refers to the time limitations and states that when someone receives fill, often times they are called the night before. In a case like that, someone wouldn't want to turn the fill down. The Board talks about the exemptions. Cynthia refers the Board to Page 4. Robert is happy

with the 250 cubic yards, after reading the exemptions. Robert states that technically the amount of fill should be related to the zone. Brian Bartsch of the CAC makes a suggestion of 250 cubic yards for one acre and under, and 500 cubic yards for over an acre. Cynthia states that most people will not come in if the work they are doing is part of another permit, such as a Site Plan or Subdivision. This is for the rare occasion when someone may want to level off their back yard. Robert talks about the berm on the Havell property near where the Salem Hunt Subdivision will be. Cynthia states that there is more flexibility built in to this law for instances like that. Frank states that there are a lot of doomsday scenarios the Board may come up with, such as a drainage pattern changing, and affecting a neighbor's property. There is a discussion about the rights of the homeowners as far as a neighbor damaging another neighbor's property. Cynthia suggests the Board leave the number at 250 cubic yards, not to exceed 5,000 square feet for now. Robert states it should relate to the acreage. Sonja will work it in as a percentage of the acreage. Brian refers to a small berm changing the water pattern from one neighbor to another. Brian states that berms affect the flow of water. Robert states there are other avenues to control drainage. Cynthia talks about an exemption being provided if the drainage pattern will not be changed. Bernard states that a homeowner may not know until the situation comes up. Cynthia states that if there is specific language in the Law, the Building Inspector may reinforce it by having the Applicant come before the Planning Board. Cynthia states the Board will discuss the thresholds further. Cynthia will do more research online.

Cynthia asks the Board if they want to go through any other sections tonight. The Board decides to wait until everyone is present. Cynthia states that MDRA has patterned this new Law after other local Laws.

Cynthia states that we did introduce a slightly different farming definition. Robert states that definition is insufficient. The States definition should be used to avoid problems with the Ag & Markets. Robert states he purchased a book from Pace Law School which he brought with him tonight. Cynthia asks to borrow the book. Robert refers to boarding stables and what constitutes horse boarding. Robert states that commercial horse boarding is a defined use. Sonja takes a look at the book.

Cynthia confirms with Brian that the CAC will be meeting this coming Monday and will do their own research. Cynthia states we will discuss this again on January 19th.

Robert suggests the language be changed regarding the breeding and raising of livestock, as well as commercial boarding operations. The Board discusses why 1,000 cubic yards had been taken out for roads. Cynthia reads the old Law. Sonja is not sure, and will look into it.

Robert refers to Page 3 regarding clean fill. Fertilizers and pesticides are discussed. Robert refers to someone building a barn on a piece of land that may have organic fertilizers. If one were to have a soil analysis, the standards may not be met. There is discussion about making an exception for organic materials.

There is discussion about taking the DEC definition of clean fill out.

6. Next Meetings:

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

7. Comments from the Chair:

Cynthia confirms with Brian that the CAC will be starting up again. Cynthia states that the Wetlands Ordinance has been revised and it will be adopted by the Town Board next Tuesday.

Frank states he received the Ajamian data to take a look at. Cynthia confirms Frank assisted with the recommendation of the Maintenance Bond. Frank refers to the COO for the house and states this will not affect it.

8. Resolution:

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