



record them. Once Roland advises Cynthia this has taken place, the Mylars may be signed. Roland states he does not have the originals yet. Mr. Barrett states that Frank looked at the documents today and thought they looked fine. Mr. Barrett states that he will have the owners sign an original and asks Roland if there is a fee. Roland states that Mr. Barrett should have the individual who prepared the documents speak with the County Clerk and find out what the recording fee will be. The check will then be made payable to the County Clerk. Mr. Barrett asks if he should bring everything back to the Planning Board. Roland states that he files with the County Clerk. Mr. Barrett should send everything to him for recording, such as the tp584 and the document itself. Roland states whoever prepared the documents needs to prepare a Prep for Recording document and then assign it to us. This is a Westchester County requirement. Roland states that Mr. Barrett should have the individual who prepared the documents call his Office Manager Wendy and she will walk them through how to assign the prep document to us. Mr. Barrett states that he has discussed this with Frank. Frank has a Stormwater Control Facility Maintenance Agreement boiler plate document that has been used before. Frank thought that document would be fine. Mr. Barrett will forward the document to John Arons and let him handle this with Roland. Cynthia asks Mr. Barrett to remind Mr. Arons about the March deadline. Cynthia states she needs to sign the Mylars before the end of March. Mr. Barrett states that two revised copies of Sheet 1 will be submitted in Mylar form.

Cynthia states that one condition in the Resolution of Approval which has to be met before she may sign the Mylars is the requirement of proof that the Army Corps of Engineers has provided their sign off. Cynthia states that with the Dubin Project the State DEC coordinated with the Army Corps of Engineers. When we received the Permit from the DEC, the Army Corps of Engineers provided their sign off right on the Permit. When this came up with Monomoy, we were anticipating the same procedure. After making a phone call to the State DEC we were told that they no longer receive sign off from the Army Corps of Engineers on their Permits. Cynthia states that Mr. Barrett is working full speed ahead to get the Army Corps of Engineers on board.

Cynthia states that she knows Mr. Barrett is working diligently on this, and the March deadline is the two year deadline, which means no more extensions will be allowed. Cynthia talks with the Board about changing one of the conditions in the Resolution of Approval to state that rather than having the Army Corps of Engineers Permit or sign off in hand prior to her signing the Mylars, the documentation will be required to be submitted before the Building Inspector allows any site work to begin. Cynthia states that is the way the procedure used to be done.

Cynthia reads the following Resolution into the Minutes and states “May it be Resolved that the Planning Board Resolution of Approval dated April 7, 2010 shall hereby be amended by deleting the U.S. Army Corps of Engineers from Condition A(2), and adding a new condition B(18) as follows,” “No site work shall begin until the Building Inspector is in receipt of the U.S. Army Corps of Engineers Permit or sign off.”

**Charlotte Harris motions that the Planning Board Grant the Amendment to the April 7, 2010 Resolution of Approval Discussed Above. Bernard Sweeney seconds. All in favor. No opposed.**

After the motion, Mr. Barrett thanks the Board. Cynthia states that the Applicant is almost there with the SWPPP, and they have the legal document to take care of. Cynthia states she does not believe Declan Orphan came in to sign the Mylars yet, and now there will be a revised Mylar. Cynthia asks Mr. Barrett to remind Mr. Orphan about the deadline.

3. **Speyer:** Don Rossi, Esq. (owner – Jerry Speyer)  
**Chapter 189 Tree Cutting/Stormwater** (location – 168 Titicus Road)

- Review reports from Planner and Engineer

Cynthia states that this past Saturday the Board Members went out on a Site Inspection which was extremely helpful. In front of us tonight we have Reports from the Town Engineer and Planning Consultant. Cynthia states the project team for the Applicant is here tonight. Cynthia would like the Board to go over the SEQR process. Cynthia asks Don Rossi to introduce the individuals here tonight, as there are new faces. Mr. Rossi states that with him tonight are Patrick Sheils, Project Manager for Tishman Speyer; Ed Hollander, Landscape Architect, as well as Brian Fields from his office. Also with us tonight is Robert Aiello, Engineer from John Meyer Consultants. Mr. Rossi states the reports are most helpful and he thanks the consultants for a thorough initial review. Mr. Rossi states he would like to start with the SWPPP. Mr. Rossi states he would appreciate it if the Board would allow Mr. Aiello to sit down and meet with Frank. Cynthia states that she and Frank anticipated that request. Cynthia states that the Board is usually agreeable for such a Meeting to take place. Cynthia states she usually sits in. Dawn will sit in and take notes. Cynthia will have to check with the Board. The Board agrees. Mr. Rossi states that 60 or 75 percent of the review comments are just fine. There are a number of comments Mr. Aiello would like to go over conceptually with Frank. Mr. Rossi refers to the New York State Stormwater Management Design Manual (Manual) that has recently gone into effect and states there have been dissertations between engineers as to exactly how certain items should be addressed. Mr. Rossi states that many of their comments have to do with the new Manual. Mr. Rossi states that in regards to the SWPPP in relation to comments from Sonja, the work that is proposed down near the road and within the 300 foot distance from the reservoir already received a waiver on the prior Application for the installation of the impervious surface for the driveway. Mr. Rossi states that the expansion of the detention basin is all encompassed within the SWPPP. The need for the DEP to approve the SWPPP is triggered by the amount of work that is being done on slopes in excess of 15%. All of the work within the 300 foot limiting distance is included in the SWPPP and would be approved as we go forward.

Cynthia asks if these latest Plans have been sent to the DEP. Mr. Aiello states yes. Cynthia confirms that a new set of Plans including modifications will be sent to the DEP after the Meeting with Frank takes place.

Mr. Rossi states his interest for the Board to adopt a Resolution tonight declaring Lead Agency.

Mr. Aiello refers to the Memo from Frank and states that Frank may have not understood their intentions. Mr. Aiello talks about the need to tweak a few items and provide additional information. Mr. Aiello states that conceptually he believes they are on the same page. Mr. Rossi states that a good example would be the proposed rain gardens, and their design. Mr. Rossi states there are two being proposed.

Mr. Rossi refers to the Memo from Sonja and the comment about scoping the potential impacts. Mr. Rossi would like to discuss this tonight. Cynthia refers to the Plans she has up on the Board. Cynthia states she highlighted trees that are 20 inches or greater. Cynthia marked the trees that are not proposed to be removed. Cynthia states that she realized certain trees may be taken off the list, as they are outside one of the areas to be disturbed. Cynthia states there are approximately 80 trees that caught the attention of Joe Bridges. Cynthia states that approximately 30 trees will be kept and approximately 50 trees will be taken down. Cynthia tried to plot the trees and states that everything highlighted in pink is 20 inches or bigger. Cynthia states that during the Site Inspection in the field, looking at some of the larger trees, the Board thought they understood those larger trees would remain. Cynthia states that is actually not the case. The Applicant is keeping some of the healthier 12 and 14 inch clusters. Cynthia states this is not a problem, but the Board would like clarification so they know what is being proposed to be planted, as well as taken down, especially when we have a Public Hearing. We want everything to be clear.

Mr. Hollander states they didn't look at a particular size threshold. They looked at the health and structure of

the trees, and whether they have broken branches. We will go back and prepare a separate map and evaluation of trees that are 20 inches and larger. Cynthia states not to bother with the Spruces as the Board is in agreement about those. Cynthia refers to one area where there is a nice concentration of trees and asks Mr. Hollander to either demonstrate what they are proposing, or rethink the idea, as it doesn't appear to be an important view shed. Mr. Hollander talks about preparing a map which will simplify the Plan showing a list of trees that are 20 inches and larger. We will provide an inventory list showing whether the trees are healthy, damaged, or broken. Sonja asks Mr. Hollander to also provide a list of the names of the trees. Sonja states it was difficult to do an evaluation as to whether the trees are native or non-native without the names. Mr. Hollander states they will prepare a map that shows every native tree above 20 inches with their botanical name.

Cynthia talks about the trees that are to be put back and asks whether they are showing a canopy of the tree sizes to be planted today, or what the ultimate size will be. Mr. Hollander states it is neither. Mr. Hollander states they have tried to think about what the canopy will be after the trees have been established for approximately five to ten years. Mr. Hollander states the trees going in will be three to four inch caliper. Each tree has a different kind of growing characteristic. Cynthia asks Mr. Hollander if he is proposing to create another forest where all the trees will grow together. Mr. Hollander states absolutely, that is what a native healthy forest is. It is the shade that is cast by the overreaching super canopy that provides the level for the flowering trees which provides shade for the ferns and ground plants. We strive to establish deer resistant native ground plants. Mr. Hollander states that a native woodland would have all sorts of wild flowers which we won't be able to establish because of the deer. On the other hand, all of the native ferns will not be eaten from by the deer. Mr. Hollander states they are doing a hydro ecological non-deer eating version of a native forest.

Cynthia asks if there are any other questions regarding the MDRA Memo. Cynthia suggests going through the SEQR Form and states that specifically, regarding the views, the Town of North Salem now has an Open Space Plan. Cynthia gives Mr. Rossi a view shed map and website, and states the reason Mr. Speyer's property is highlighted in dark green is because it has a lot of viewpoints from Mills Road which is why the view shed information was asked to be submitted by the Applicant. One criteria was met which is to keep the canopy of trees behind the house. Cynthia states that the response should be yes to No. 14 in the SEQR Form. Cynthia states that in the Open Space Plan there is also a potential recreation parcel. Cynthia states this is the one part of the Open Space Plan Map that is still in Draft form. Cynthia states that Mr. Speyer's property is highlighted in green because of the known hunting that goes on way in the back, and for the potential of a walking/riding trail from Joe Bohrdrum Park to the Audubon. Cynthia provides Mr. Rossi a copy of another Map which is also on the website. This is a wish list from the Recreation Department. It is a goal they are striving for. Cynthia states that when the Historical Society wanted to go look at the site where they mined the rocks to build the Titicus Dam, Mr. Speyer gave them permission to follow the hunting trails to the mining site. Cynthia states the trails are already there and are absolutely magnificent. Cynthia shows on the Map the trail where the rock was brought down to build the dam. The trolley line is still there. Cynthia shows where the house site is in comparison with the area she is speaking about. This is land up, over, and down on the other side of the stream. Cynthia states that she would like to see the response to No. 13 in the SEQR Form as a yes. Mr. Rossi states it raises the type of issues he deals with regularly with respect to riding trails. Mr. Rossi states that Mr. Speyer and Ms. Farley are away. He would have to discuss this with them. He is not sure what their reaction will be. Cynthia states that if we don't ask, we will never know. Mr. Rossi states initial discussions he has had with them regarding Conservation Easements and restrictions against developments have not been favorable. Mr. Rossi talks about the potential liability, as well as the need for privacy. Mr. Rossi will take it up with them. Cynthia states there are two separate issues, a Conservation Easement, and trails. Mr. Rossi states he had discussions with his clients and they said no to a Conservation Easement. Sonja asks Mr. Rossi why and states that a majority of the rear portion of the property is wetlands. Mr. Rossi states that is why, as it is already subject to regulations, and it is a large piece of property. Cynthia

asks Mr. Rossi what the access allowance is across the City property. Mr. Rossi states it is 6 dwelling units. Cynthia asks why Jim Lundy stood in front of the Town Board in 1986 and asked for alternate access. Cynthia reads minutes from that Meeting where he stated "it is either one or maybe two". Cynthia asks Mr. Rossi if he has provided the Permit from his files. Mr. Rossi states he has not. Mr. Rossi can not speak to this, and does not remember dealing with this, as he was practicing with Mr. Lundy at that time. Cynthia refers to a January 28<sup>th</sup> Meeting and states that Mr. Lundy stood in front of the Town Board and tried to get access. Mr. Lundy talked about the City controlling it, and it being one lot. Then Mr. Lundy came back in June asking the same question he stated one lot, maybe two. He was trying to convince the Town Board that they would be allowed to get only one lot on the entire parcel from Route 116, possibly two. Cynthia states the driveway access permit states how many dwelling units are allowed. Mr. Rossi states that Mr. Lundy may not have known this at the time. Subsequent to 1986 we had the occasion to do a lot of research into the reservoir crossings. Mr. Rossi refers to the Agranoff property and states there were a number of lots along Route 116 that benefited from a favorable court case decision dating back to the 1920's. This was brought by Mr. Wallace. The name is actually a road in Town. Little Mountain is also one of them. Mr. Rossi states these were permanent grade crossings, not specific permits granted by the City. They were established by a court case. When the reservoirs were being formed back in the 1890's the City drew a line around where they wanted the reservoir to be. A number of land owners brought lawsuits against the City. They were ultimately resolved in the 20's. This is one of the crossings involved. Mr. Rossi states they will provide information to the Board. Roland asks if Mr. Rossi has a Title Report. Mr. Rossi did not represent the Speyer's when they bought the property. He will look into it. Cynthia thought the documents were presented to the Town when they obtained the Permit to cut the driveway. Cynthia could not find a copy in Bruce's files. Cynthia states it is important to have it. Cynthia states that clarification is needed. The Applicant is showing two dwelling units and a guest cottage that is not a dwelling unit. Cynthia states that on the SEQR Form someone checked off that there are three dwelling units. Mr. Rossi states three was intended to cover the three units. Cynthia states to be specific. Mr. Rossi states that Sonja suggested removing "Under common 3 ownership)". Mr. Rossi states the proper way might be to state two dwelling units and a caretaker's cottage. Cynthia suggests listing it as a main house, guest cottage, and caretaker's cottage. Cynthia asks if there will be kitchen facilities in the guest cottage. Cynthia was told on the Site Walk that there would be. Mr. Rossi states that no final decision has been made. Cynthia states that if the decision is to have kitchen facilities, it will be necessary to go to the Zoning Board of Appeals for an accessory apartment because it will be considered a dwelling unit. Cynthia states the Application that was submitted said this parcel abutted a State Highway. Cynthia states that it does not abut a State Highway. The Applicant will have to show access for two or three dwelling units. Mr. Rossi asks if they need an Accessory Apartment Permit for a caretaker's cottage. Cynthia states they already have it. Cynthia states that an Accessory Apartment Permit was issued for the caretaker's cottage at one time. It may have expired. Mr. Rossi states that generally they do not expire. It may have expired by virtue of the Code provisions adopted subsequent to the grant of the Special Permit. Mr. Rossi states he will check.

Cynthia states that the SWPPP should be done based on the full 17 acres. Cynthia states the SEQR should show the disturbance as the same acreage rather than the five acres. Sonja states that in the beginning of the EAF you have to represent the entire area of the property, not just the disturbance area. Cynthia states they were listing the disturbance area as five. Mr. Aiello confirms the Board is talking about Item No. 2 on Page 3 in the EAF. It should be approximately 80 acres. Cynthia states that when they work out the disturbed areas that should total the 17 acres. Mr. Rossi asks if they would be allowed to contact Sonja and go over these. Cynthia suggests Mr. Rossi take time and go over them, and he should call her with any questions. Cynthia states the other item is regarding the approval letter required from the NYSDEC, as well as SWPPP. Mr. Rossi states they did not consider the Town's SWPPP as a separate approval because they believe it was encompassed in the Chapter 189 Permit. Cynthia states that ultimately, Bruce will be the person who signs.

The Planning Board makes the recommendation to Bruce.

Cynthia asks how quickly the requested information will be handed in, and talks about the Applicant getting to

completeness. Cynthia states the Board seems to be comfortable with the Plan, and talks about scheduling a Public Hearing in order to see how the neighbors feel. The next deadline date for submittals is March 16<sup>th</sup> for the April 6<sup>th</sup> Meeting. Cynthia states a Public Hearing is not supposed to be held until everything is complete. There is discussion about keeping the Public Hearing open if necessary. Roland talks about keeping the Public Hearing open because the Applicant will still be in the SEQR review process. Cynthia asks the Board if they feel comfortable with setting a Public Hearing for the April 6<sup>th</sup> Meeting. Cynthia understands the concerns about timing due to the upcoming spring.

Mr. Hollander states they brought boards showing potential views. It may be helpful to leave them here for people to see. Cynthia states that during the site inspection one issue we asked about was lighting. Mr. Hollander will provide a Lighting Plan by the March 16<sup>th</sup> deadline date.

Bernard refers to one of the boards and asks if the potential building is shown. Mr. Hollander states yes. Bernard asks if the trees shown on the board reflect trees to be replanted in the area where they were removed. Mr. Hollander states yes. This board shows how the site will look in 2015. Bernard refers to the Permit from five years ago and asks how come trees were not replaced. Mr. Hollander does not remember. He states that everything that was supposed to have been done as part of the 2001 permit was done. Cynthia asks if trees were taken down as part of the 2005 permit. Mr. Hollander does not think so. Mr. Hollander states that they got to a certain point, and then everything stopped. Cynthia states one item that was not clear, reflected in the MDRA Report, was that the replanting would include some of the areas of the original Permit. This led us to believe that maybe there was supposed to be replanting that never took place. Bruce states that what we see at the site today is the result of the foundation that had gone in, as well as stormwater facilities. Additional stormwater facilities were installed in consideration of the runoff at the time. When this project was put on hold, it was with a great deal of thought about what would happen during the interim period that we are now in to minimize erosion. All of the clearing was done in conjunction with the house, which is hard to picture now because Mr. Speyer had the foundation taken out and everything was filled in. Cynthia states we are not in the areas of the building of the house or the septic, we are in the areas of the tree clearing for the view sheds. Cynthia asks if those were left unfinished or not. Bruce states it did not go into the second clearing. Everything taken out was permitted at the time. Mr. Aiello states that the 2001 clearing didn't require replantings. Sonja states the 2001 Resolution does not refer to a Planting Plan. Mr. Hollander states that when they started up again in 2005 this was never brought up. Mr. Aiello states that the current plans include plantings in all prior disturbed areas.

Cynthia states that one item not in the MDRA Report is a concern that due to the history of this property, with the starts and the stops, if they start clearing, and then there may be another stop. Cynthia asks Roland if the Board should consider requesting a bond or a letter of credit to make sure the planting part gets finished this time. Roland states absolutely. Mr. Rossi states that it is the overall obligation of the landowners to comply with the permit requirements. Cynthia states of course it is, but you never know what might happen, there are very steep slopes. Cynthia states that we usually ask the Applicants representative to suggest an amount for our Engineer to review. Mr. Hollander confirms this will be a Performance Bond for the plantings. There is a discussion about a three month period of time.

Mr. Rossi refers to the Titicus Addendum to the Biotic Corridor Report regarding the 1,500 foot distances from the vernal pools. Mr. Rossi states that so many parts of the property have already been disturbed. Mr. Rossi states that if they do have 1,500 feet on either side of the property, it strikes him that is far enough away so they don't have to worry about it. Cynthia tends to agree especially due to all the work that has already happened there. The areas have already been opened up for the cottage, art barn, and tennis courts. Cynthia states the area of disturbance has already happened. That is one of the reasons why a Conservation Easement would be so wonderful back there. It is a very wonderful valley that goes across two or three parcels. It is very special. Cynthia asks Mr. Rossi to ask his client about the Board's concerns. It would help to keep the

value of the property.

There is a discussion about the stone walls being preserved. Mr. Hollander states that he may have misspoken. There are no plans to remove the stone walls from the site. They may be rebuilt or relocated. Cynthia refers to the old foundation and asks if there are photographs of it. Cynthia states the Town Historian would like to take photographs for her files. Mr. Rossi states to let him know and he will make sure the gate is open. Mr. Hollander will see if he has digital photographs.

Mr. Field has a question about Page 6, Item 11 in regards to revising the layout of the plan sheets. Mr. Hollander states this is short plan describing how we would approach the tree clearing and replanting in a small window of time. Mr. Hollander states those numbers do not relate to the other drawings. Cynthia states the sheets should be consistent. Mr. Field understands.

Cynthia asks Mr. Rossi to call her about setting up the meeting with Frank. They will need about an hour and a half.

**Chairwoman motions that the Planning Board Declare their Intent to be Lead Agency for this Type I Action for the Speyer Chapter 189 Tree Removal Permit and Stormwater Pollution Prevention Plan Application. A Copy of the Notice will be Circulated. Bernard Sweeney seconds. All in favor. No opposed.**

**Chairwoman motions that the Planning Board set the Public Hearing for April 6, 2011 for the Speyer Chapter 189 Tree Removal Permit and Stormwater Pollution Prevention Plan Application. Charlotte Harris seconds. All in favor. No opposed.**

After the motion, Mr. Rossi confirms the Board will need a revised EAF for circulation.

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

Cynthia states that Croton Falls Auto Center, Inc. has submitted a Sign Permit Application. Under our Ordinance, only one sign is permitted, and they would like two. Cynthia asks Roland whether the Planning Board has to make a referral to the Zoning Board of Appeals for a variance, or may they go on their own. Roland states they either need a referral from the Planning Board or the Building Department. Cynthia states this will be added to the March 16<sup>th</sup> Work Session Agenda. Cynthia asks the Board to think about allowing a second facade sign.

Referring to the Draft Chapter 89 Land Excavation and Fill Law, Cynthia asks Roland if he had a chance to look at the Draft regarding the section on Penalties. Roland prefers the penalties listed in Chapter 189-12 (2), and states that gives us the power of making sure restoration of the site takes place. Roland states that is more important than any monetary fine. No matter what we set the monetary fine at, it will not be large. It is all about restoration. Roland refers to Chapter 189 (3) and states the Building Inspector has a right to do this anyway, so we are not gaining anything by putting it in Chapter 89.

Cynthia confirms with both Sonja and Bruce that they have no further questions for Roland and he leaves.

#### **5. Financial Report:**

- February, 2011

**Chairwoman motions that the Planning Board Approve the Financial Report for February, 2011.**

**Bernard Sweeney seconds. All in favor. No opposed.**

**6. Minutes:**

- February 9, 2011

**Chairwoman motions that the Planning Board Approve the Minutes for February 9, 2011. Gary Jacobi seconds. All in favor. No opposed.**

**7. Next Meetings:**

- Work Session – March 16, 2011 – Ruth Keeler Memorial Library
- Regular Meeting – April 6, 2011

**WORK SESSION:**

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

Bruce thanks the Board for the opportunity to provide his comments regarding this contemplated legislation, especially from the perspective of what it will take to enforce it. Bruce states he has made it half way through the Draft. Bruce refers to the Farming Operation definition on Page 3 of the March 2<sup>nd</sup> draft and states this definition conflicts with Chapter 250-5 which calls for not less than four acres. This current draft calls for not less than seven acres. Bruce talks about the exclusions listed in the Draft and states the only item excluded in 250-5 is riding academies and dog kennels. Bruce states that the Farming Operation includes commercial horse boarding operations, it does not exclude it. Cynthia states Bruce is right. Bruce states something is not right with the wording. There is a discussion about the exemptions, and providing a pass to Farming Operations. The decision is to keep the definition the same as it is listed in 250-5, and change the exclusions. Bruce confirms that Farming Operations receive a pass on Wetlands. Cynthia talks about what we do regulate such as Special Permits for the keeping of horses, and stormwater work. Bruce talks about contours of the land changing, and states that under stormwater, they would need a Permit. Cynthia states this is all about moving earth in large quantities and asks if under the State guidelines we are supposed to give farms a pass. Bruce states that this would give farms a pass where stormwater doesn't. There is a discussion about following the definition for stormwater. Referring to Chapter 193, Cynthia reads the definition of Farming Operation to be "Any operation on a parcel of land, not less than four acres, that is used for soil-dependent cultivation of agricultural crop production and/or the raising of livestock, poultry or dairy products, raising of fur-bearing animals, the keeping of horses and livery or boarding stables". It excludes riding academies and dog kennels. The Board discusses using this definition in Chapter 89. Sonja does not remember why the definition is different. Cynthia talks about the exemptions under the stormwater to be tilling soil for planting, or clearing to create cropland or pasture, as part of a farming or agricultural operation. All other aspects of Farming Operations are regulated. Cynthia states she is happy Bruce brought this to their attention. She and Sonja will work on this part more.

Bruce refers to the definition of Fill, Clean on Page 3 and does not understand what prompted the addition of "non-organic" fertilizers. Bruce understands we try to promote organic fertilizers, but he does not know them to be outlawed. Sonja states that Robert brought this up during the last discussion. He is not with us tonight. Bruce states this is a definition of Clean Fill, but yet we permit Fill per NYCRR 360 which is different than this definition. Bruce is looking for consistency. Cynthia states they should look at the NYCRR definition. Bruce states that in that definition you will find that certain construction materials are permissible in Fill, such as ground up concrete.

Bruce refers to the definition of Filling on Page 3 and states he has a difficult time with the word “replace”. He states that if he wanted to take out poor soil and replace it with top soil he should be able to do that. Bruce would like to know the purpose of the word “replace” in that sentence. Cynthia states we are defining Fill here, not regulating it. Cynthia refers to Page 4 and states that an excluded activity is in connection with repair or replacement of existing facilities. Sonja confirms the act of Filling does not make sense to Bruce. That definition will be reworded.

Bruce refers to the definition of Grading on Page 3 and would like the word “or” added after the word “and”.

Bruce refers to the excluded activities on Page 4, No. 2 regarding work being done outside the controlled area. Bruce states there have been times when work has been permitted to be done inside the control area in conjunction with the issuance of a Wetlands Permit. Bruce gives the Tonery project as an example. Cynthia states that if someone is in front of the Board and would like to locate materials in a controlled area that will be covered under the Wetlands Permit. This will give individuals more of an exclusion by saying that if the materials will be located outside the area being regulated by the Wetlands Permit, the Applicant will not have to come to this Board for a Fill Permit. Bruce states that in reading this, he feels individuals would have to come to this Board if the materials are inside the controlled area. Cynthia states that individuals would already be in front of this Board for a Wetlands Permit. We are not excluding people from the requirement of a Wetlands Permit. We have had people obtain two permits, one for wetlands, and one for Chapter 189 such as Tonery. If someone is before the Planning Board, or working with the Building Inspector as part of a Wetlands Permit, the Building Inspector may advise that the best place to locate the materials is right outside the wetlands. We do not want people to have to come to the Planning Board for a Chapter 189 Permit. The Building Inspector will handle it all alone under a Wetlands Permit. If the materials will be located within a controlled area, they will already be regulated. Bruce understands.

Bruce refers to Page 4, No. 5 and does not understand the thresholds. He states that if one threshold applies, than none of the rest would apply. Cynthia states that only one threshold needs to apply for an exclusion to be granted. The thresholds are reviewed and will be reworded.

Bruce refers to Page 5, No. 6, and has a concern with the words “in kind”. The size of drainage pipes are discussed. Cynthia states that what we are trying to say here is that different areas will not be disturbed. If someone locates the pipe in the same trench or hole, they would receive a pass. Cynthia states that the changing of the pipe size is not what we are regulating here, we are regulating the digging of the hole and replacement of the disturbed soil. The words “in kind” will be reworded.

Bruce refers to Page 5, No. 8. Cynthia states this language was taken out of the old Chapter 89. Bruce refers to the certification of the material’s compliance being provided to the owner by the supplier. Bruce states he has been told that testing soils gets very expensive. While it is appropriate for soil to have questionable content when they are coming from a known place that has no record of prior problems, to require a certification on top of that is an expense. Cynthia asks how we would know that the Fill is clean. Bruce states we just know. Bruce has had situations in Town where someone has had excess Fill and there is a need for Fill. He connects the two individuals together because the Fill is coming from a clean place or at least clean by virtue of the fact that it is virgin soil. Cynthia gives an example of someone digging up top soil from the front yard of a property. If someone moves soil and stockpiles it for future use, is the Fill considered clean? What if the property used to be a farm? Bruce talks about the requirement of having every truck load of Fill to be certified and states that would be a large bill. Cynthia states she received a load of bad Fill consisting of black clay. It was sold to her as top soil. It was not top soil. Cynthia states the fill came in and by the time she moved it a few months later, she had to use a pick to move it. Cynthia had it tested and it was not good. Bruce asks if it was contaminated. Cynthia states yes. She had to have it taken away. Cynthia states we have to be more cognizant about where the materials are coming from. There is a discussion about not being as

concerned with small quantities versus larger quantities. Bruce states he will find out more about the certification testing process and costs associated with it. He will report back to the Board. Bernard agrees that if it is a small amount, certification may not be needed. Bernard does not agree with the residents having to pay a lot of money. Mr. Rossi talks about purchasing materials in bulk and wanting to make sure it is not contaminated. There is a discussion about civil and criminal enforcement. Mr. Rossi refers to NYCRR Part 360 and states it should be looked at regarding the definition of Fill. Mr. Rossi states there are a number of recycling items now that should be looked. Mr. Rossi states that whoever delivered the contaminated soil to Cynthia should have been held responsible. Cynthia refers to Section 8 being in the law right now and asks Bruce if he requires certification. Bruce states he uses it judiciously when he has reason to believe there may be an issue. Bruce encourages knowing where the materials are coming from.

Bruce refers to the top of Page 7 and thanks the Board for the section regarding an optional initial review, as well as waiving certain requirements. Bruce sees the Conservation Advisory Council listed as having involvement. He states they have also been playing a roll in the wetlands aspect.

Bruce refers to Page 8, Item (f)(3) and asks whether there should be a fee associated with this procedure. Bruce refers to the Planning Board Resolutions. He refers to the Permits from the Building Inspector as being on cardboard. Bruce thinks that if there will be inspections and monitoring, there should be a fee associated with it. Cynthia asks Bruce if he goes out on the inspections himself or whether he involves the Engineer or Joe Bridges. Bruce states he usually tries to be proactive where there may be problems. Bruce refers to a lot on Fox Den Lane where a septic system had to be put in prior to the building of the house. There was a construction sequence. Bruce saw that as being problematic. He had Roger Schalge the Engineer at the time work with him regarding the bond. Cynthia talks about the fee being a percentage of the project cost. Bruce will speak with Maureen and Rosemary about this.

Bruce refers to Page 8, Item (3)(a) regarding permit expirations and states that the wording should be “conditional approval”, not “permit”. A permit is not given until all of the conditions have been satisfied.

Bruce refers to Page 8, Item (3)(b) regarding the expiration of a certificate of compliance. Bruce would like to see the Board having the ability to grant an extension easier. Bruce suggests adding in language to (b) “or as determined by the Planning Board to be warranted by the circumstances”. Gary believes that language is listed on Page 8, Item (4). Bruce states these things take a long time to turn around. He talks about the requirement of the submittal of a request 45 days prior the an expiration date. Gary states that the Board has always worked together regarding providing extensions. Cynthia states that (3)(a) can be extended twice with two ninety-day extensions. Cynthia states that in (3)(b) once the Mylars are signed, the Applicant is supposed to apply to the Building Department and finish within a two year timeframe.

Bruce refers to Page 9, Item 5 (b) and states he understands (1). Bruce states that on (2) he has a concern regarding the slope percentage and states that 15% is not a particularly steep slope. Cynthia states this is just for a waiver of the Public Hearing. The header will be revised to include Waivers. Bruce talks about (a) and confirms the Board may waive the submission requirements, regardless of the slope, but not the Public Hearing. Cynthia states this is new. We have had instances when a Public Hearing may not be needed as there will be no impacts to neighbors. Cynthia states it is a big deal for Applicants to go through Public Hearings. Bruce talks about going from 15% to 20%. Cynthia states the public has a right to come out and make sure the Planning Board and engineers are doing a good job in regards to the slopes greater than 15%. Bruce refers to (3) as far as the activities not occurring within any minimum required front, side or rear yard and asks if that activity includes an approved access way. Cynthia states that access ways are already exempt. Bruce is talking about an access for stormwater materials. Cynthia states if the access way will be right in the face of a neighbor, we will not waive the Public Hearing. Bruce is thinking about how we get to the area to be disturbed. There is a discussion about Restrepo where an access road was created to do the work. That would

be considered an area of disturbance. It would be part of a Permit. If the access road is in a side yard near a neighbor, we will not waive a Public Hearing.

Bruce refers to Page 10, Item (b)(2) regarding the 15% grade or less. Bruce does not know why we have the first part if we are saying the second part is allowed. Cynthia states we are stating our goal for someone to come in with a plan showing 15% or less which is what the Ordinance says now. We added the last sentence to give a little more leniency. Applicants have to make an argument why they want a slope greater than 15%.

Bruce refers to Page 10, Item (b)(3) regarding fixed machinery and asks if the Board considers a rock crusher to be fixed machinery. Gary states no. Bruce states he may be challenged on that, as these machines are often erected on a site. Bruce refers to Old Salem Farm. Cynthia states that language is taken from the current law. Charlotte asks what would be considered fixed machinery. Gary states that would be something that is constructed on site not transported. It would be there for a length of time. Not something brought in on a trailer.

Bruce refers to Page 10, Item (b)(6) and states the word “of” should be changed to “or” in the second sentence.

Bruce refers to Page 11, Item (b) and (c) and states the exceptions listed under the Noise Ordinance state that nothing may be delivered until 8:00 a.m. and until sundown 7 days a week. Cynthia asks Bruce if he is suggesting that be changed. Bruce states he is suggesting being consistent. Bruce states that in the summer time a lot of construction begins at 7:00 a.m. The Board is fine with the 7:30 a.m. time.

Bruce refers to Page 11 Items (c) and (d) and asks the Board if they are going to require this on every Permit. Cynthia states the Board would ask for the location of the placement. Bruce talks about being on sites and contractor’s not being able to comply regarding limits of disturbance. Bruce talks about Applicants having to come back before the Planning Board being a little bit erroneous. Gary states that the word “may” is used, that was the intent. The Board would like the right to establish a schedule. Speyer is discussed as how the process will be done. Cynthia states that when engineers representing Applicants come in, we ask them several times whether they will be able to work within specific lines of disturbance.

Bruce states that is as far as he was able to get with his review. The Board talks about discussing this again at the Work Session on March 16<sup>th</sup>. The Board appreciates the input from Bruce.

## **9. Resolution:**

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