

Interoffice Memo

Date: January 16, 2007
To: File
Cc: Roger Rousse, Roger Moore, Paul Shumejko, Scott Cope, Don Harning
From: Paul M. Davis, P.E.
RE: New Love Lane Meeting Summary

This document serves to summarize and record discussions held regarding the filling of property owned by Mr. Patrick J. Gruits (aka Joe Gruits) without approval or permits from Rochester Hills or other permitting agencies. The property that was filled and is owned by Mr. Gruits is located on New Love Lane and is more particularly identified as Lot 17 and the western half of Lot 18 in the Heartpeace Hills No. 2 platted subdivision.

It was noticed in August 2005 that fill was being placed on the subject property without a Rochester Hills land improvement permit. The duration of the fill placement was completed prior to a stop work order being placed by the Rochester Hills Building Department and to this date enforcement action to remove the fill has not occurred. The site has remained undisturbed since the completion of the fill placement. Mr. Gruits submitted a plot plan to the Building Department in May 2006 for a proposed single family home on the subject property. Currently, the Rochester Hills Building Department refuses to approve the submitted plot plan until the previous parcel filling concerns raised by the Department of Public Services (DPS) are satisfactorily resolved. Plot plan review response letters from Don Harning dated June 6 and August 1, 2006 are attached for reference.

Mr. Gruits met with representatives from the building department and DPS on December 12, 2006 to discuss his current building permit status and also to review our concerns regarding the past filling. DPS expressed concerns about the August 2005 filling not being done with a land improvement, floodplain use or soil erosion control permit. Mr. Gruits said that his neighbor (Radcliffe) owns the easterly half of platted lots 18 and 19 and Radcliffe had a landscaping company (Sinacori) place the fill to make mowing the property easier. Mr. Gruits added that the filling operation also extended onto his property ownership of lots 17 and 18 but was not within a regulated floodplain and was only a few inches in depth.

Mr. Gruits explained that his Lot 17 and 18 property was previously raised above the regulated floodplain elevation of 805.1 feet, USGS Datum and equivalent to the 805.7 FEMA N.G.V. Datum. He added that this work was performed under an MDNR permit and with City Council permission. Mr. Gruits supplied an as-built drawing dated March 9, 1992 prepared by Reichert Surveying that shows a contour at 805.1 USGS Datum and he claimed that the August 2005 filling was contained within this previously approved work. A review of the DPS microfilm and engineering file (E87-052) for New Love Lane confirms that City Council did approve the issuance of a floodplain use permit for filling work on Lots 16, 17, 18 or 19 at the December 7, 1988 meeting. The Council resolution approval states that a letter of map revision is received from the Federal Emergency Management Agency (FEMA) prior to the issuance of certificates of occupancy for structures located within the existing floodplain.

Our archived file search also produced a copy of a letter from FEMA sent to Rochester Hills Mayor Billie Ireland and received June 15, 1990. The FEMA correspondence discusses that Lots 17 to 19 can be removed from the Special Flood Hazard Area if built in accordance with a site plan entitled "Floodplain Contour" prepared by George H. Reichert, L.S., dated December 18, 1989 and revised April 24, 1990. The 1990 FEMA letter is attached for reference.

Roger Moore commented that the recently updated FEMA map still shows that Lots 17 and 18 contain property within floodplain limits where the fill was placed. Mr. Gruits explained that this condition is due to not completing the Letter of Map Revision process with FEMA. He added that he can not finalize the required change for Lot 17 and 18 until a home has been constructed on the property and FEMA will not process a map revision for vacant property.

Our file search also produced a copy of the Michigan Department of Natural Resources (MDNR) permit 88-14-0433 dated September 30, 1988. The MDNR permit mentions that approval to place approximately 150 cubic yards of fill into a wetland area – floodplain is given for the construction of four residential structures. The permit also requires 0.3 acres of new wetland to be constructed adjacent to existing wetland in accordance with plans dated August 15, 1988. The 1992 Reichert Surveying as-built drawing states that a pond was constructed in the floodplain area and it appears to be cover approximately 0.358 acres. It is assumed that this pond is the work intended for the wetland mitigation.

Two other conditions of the MDNR permit require that the applicant place three elevated areas or structures per ¼ acre of wetland and the applicant fill in a ditch on lots 16 and 17 and restore the area to its original condition. It is unknown whether these work items were completed in accordance with the permit requirements.

A soil erosion control permit issued by the Oakland County Drain Commissioners office was not on file for Lots 17 or 18 but our office does have a permit copy dated August 31, 2005 for Lot 19 owned by Patricia Radcliffe. It appears that the Radcliffe erosion control permit was issued after commencement of the filling work since DPS has pictures taken August 16, 2006 showing the work occurring.

DPS commented that our Geographic Information System (GIS) contains a two-foot contour shape file generated from a low level aerial done in 1994 that shows existing elevations lower than 805. In fact, much of the area filled would fall within the contour designated as elevation 804. However, it should be noted that the 1994 aerial contour can have a 1 foot plus/minus variance in accuracy. Mr. Gruits claim of 805.1 being the existing ground elevation prior to the August 2005 filling seems possible if the aerial contour is low by a foot.

Fortunately, DPS also obtained supplemental topography after the 2005 filling work was completed. A drawing was created by DPS that overlays the parcel New Love Lane and the lots, the 805.1 contour elevation as identified by the 1992 Reichert Surveying as-built, the wetland mitigation pond as identified by the 1992 Reichert Surveying as-built, and the limits of the 2005 filling operation. Several conclusions can clearly be drawn from a review of the combined DPS drawing:

1. The 2005 filling operation was not contained within the 805.1 contour elevation and results in unapproved fill material being placed in the floodplain
2. The 2005 filling operation has partially filled the previously constructed MDNR wetland mitigation pond

3. In addition to fill being placed on lots 17, 18 and 19, fill material was also placed on lot 20
4. Fill material was not limited to a few inches as claimed by Mr. Gruits but exceeded three feet on both lots 17 and 18
5. The water surface area of 0.146 acres as identified by an Oakland County digital orthophotography project completed in year 2000 is less than that pond area of 0.358 acres identified from the 1992 Reichert Surveying as-built drawing

Lastly, it was discussed at the December 12, 2006 meeting that the Rochester Hills Building Department will need a soil boring at the proposed home for Lot 17. Mr. Gruits thought that soil borings were previously obtained and given to Jim Dietrick years ago. A review of the engineering file produced a soil boring report from Testing Engineers & Consultants, Inc. (Report No. 14041) dated April 8, 1988. The report contains five pages of text and eight soil boring logs but unfortunately does not include a Test Boring Location Plan. This plan must be provided by Mr. Gruits to correlate which boring log applies to the proposed home for Lot 17.

It appears that the filling done during August 2005 on the Gruits property was not contained within the limits of flood plain elevation of 805.1 USGS datum and was done without permits from Rochester Hills, the Oakland County Drain Commissioner (OCDC) and the Michigan Department of Environmental Quality (MDEQ). The following action items are suggested to counter the illegal filling action and move forward with completing the proposed Lot 17 plot plan review by the Building Department:

1. Fill material placed within the limits of either the FEMA floodplain or the previously construction wetland mitigation area for lots 17 and 18 shall be immediately removed and restored. It is recommended that Mr. Gruits be permitted to keep the fill previously placed on Lots 17 and 18 from the August 2005 filling operation that is equal to or above the previously defined 805.1 elevation contour by Reichert Surveying. In the event that any fill material placed within the floodplain is requested to remain, Mr. Gruits shall perform the necessary work, including a hydraulic study of the Sargent Creek if requested, to obtain floodplain use permit approvals from FEMA, MDEQ and Rochester Hills.
2. Mr. Gruits must provide a new soil boring at the proposed home site for Lot 17 or produce a copy of the Test Boring Location Plan from the April 8, 1988 report prepared by Testing Engineers & Consultants.
3. Mr. Gruits shall submit a revised Lot 17 plot plan to the Building Department that shows the 805.1 contour elevation and wetland mitigation pond locations as defined by the 1992 as-built survey work completed by Reichert Surveying.
4. Mr. Gruits shall obtain a soil erosion control permit from OCDC for the proposed home construction on Lot 17.
5. Mr. Gruits shall complete all necessary work with FEMA and the MDEQ to officially complete the Letter of Map Revision to remove the proposed home to be constructed on Lot 17 from the limits of the 100-year flood plain for the Sargent Creek.

It is also recommended that ordinance enforcement action be expanded to include the property owners of Lots 20, 19 and the easterly half of lot 18. Fill material in excess of that reasonably expected for landscaping improvement was placed without a Rochester Hills land improvement permit or an OCDC soil erosion control permit. An existing 18-inch corrugated metal storm sewer culvert was also extended approximately 50 feet within the floodplain limits to permit the fill material placement. Similar to Mr. Gruits, the property owners of Lot 20, 19 and the easterly half of 18 will need permit approvals from Rochester Hills, OCDC and the MDEQ to keep the fill material from the 2005 work.

Attachments: MDNR Permit 88-14-0433
FEMA response letter to Mayor Ireland in June 1990
Letter dated June 6, 2006 from Don Harning to Mr. Patrick Gruits
Letter dated August 1, 2006 from Don Harning to Mr. Patrick Gruits
TEC Soil Boring Report & Profile Logs