

FINAL

**STERLING PLANNING BOARD  
MEETING MINUTES  
September 30, 2009 – Rm. 202 Butterick Bldg.**

**Present:** Robert Protano – Chairman  
Michael Radzicki – Vice Chairman  
Ronald Pichierri – ANR Agent  
Kenneth Williams – Clerk  
Charles Hajdu – MRPC Rep.  
Melissa French – Administrative Assistant

Chairman Protano calls the Planning Board Meeting to order at 7:02 PM.

**ANR's**

There are no ANR's this evening.

**MINUTES APPROVED**

**Pichierri makes a motion to approve the minutes of the Sterling Planning Board Meeting of September 9, 2009, as corrected. Seconded by Radzicki, no further discussion, all in favor, approved by the Board.**

**DPW – DISCUSSION WITH BILL TUTTLE - RE: CONCRETE CURBS AND GRANITE INLETS**

Chairman Protano welcomes Bill Tuttle, DPW Superintendant, stating that he is present this evening to discuss his proposal to eliminate granite headstones and have, in their place, Cape Cod type curbing and catch basins. Tuttle presents to the board a letter with photos and diagrams to present his proposal, attached to these minutes. Tuttle explains that the curb and catch basin design allows for easier plowing and less damage to plow trucks. He also states that as far as keeping the catch basins cleaned out, he has a crew that routinely tends to this task. Tuttle feels that the granite headstones are prone to damage, causing continual need for repair. Radzicki suggests that Tuttle provide some precise specifications that the DPW would like to see implemented which the planning board could then review and vote on. Tuttle summarizes that tonight's purpose was to open the topic up for discussion and he will continue to look into the changes and specifications that the DPW would like to see implemented. Williams would like to see a "field trip" put together in which Tuttle could take the board members to various sites to see the different curbing that has been installed in the past and any damage to granite headstones that has been caused by snowplows, etc.

**PUBLIC HEARING – MOUNTAINVIEW LANE, CONTINUED.**

It being 8:00 PM Chairman Protano opens the continuation, from September 9, 2009, of the Public Hearing for Mountainview Lane and reviews the protocol for the audience. Present this evening are James B. Simpson, Sterling Heights

FINAL

Builders, Paul Graszewicz, Graz Engineering, Scott Miller, Haley & Ward and several residents from Osgood and Beaman Roads.

Chairman Protano states that there is a letter from Haley & Ward to be reviewed and that there is a legal dispute between the developer and one of the abutters. The dispute involves a portion of land on Old County Road, currently shown on the subdivision plan as part of lot 6. Pat Fisher, Old County/Beaman Road claims to own this portion of Old County Road. Should the dispute resolve with Fisher owning this land, lot 6 would be affected. The legal dispute is not in the Planning Board's jurisdiction to solve, however Chairman Protano states that should lot 6 be affected, the revised plan will need to show that it meets current zoning requirements and a condition will be included in the Order of Conditions that no permitting, sale or construction of lot 6 may happen until the Board is convinced that any resolution does not make lot 6 "non-conforming".

Paul Graszewicz presents to the board a letter, dated September 30, 2009. This letter states that there are attached drawings with a revision date of September 29, 2009 which address the board's comments raised during the public hearing on September 9, 2009 and the remaining items in Haley & Ward's review letter dated September 29, 2009. Chairman Protano reads into the minutes this letter, in various stages throughout tonight's meeting. The items addressed are copied from the letter and are as follows;

- *A new 15' wide easement has been added to the plans to address the street trees and the utilities. Refer to sheet-2 and note – 11 (H&W comments 3 & 4).*
- *An easement for the swale on lot-6 has been added and the swale dimensions added to the grading plan (H&W comment-5).*
- *A stop sign has been shown at the proposed intersection. (with Osgood Road)*
- *The approximate location of the proposed stockpile areas have been indicated on the erosion control plan sheet.*
- *The sight distance at the proposed road is unlimited to the south (down to Beaman Road) and 275' to the north. The sight distance could be increased to 300' with some grape vine trimming on the west side of Osgood Road. A 30 MPH design speed would mandate a 220' stopping sight distance (200' plus 20' for 6% downgrade). There is a northbound posted limit of 30 MPH and a south-bound sign has been proposed. Refer to sheet-4.*
- *Slope granite curbing has been specified for the entrance radii and a detail added to the plans.*
- *A road name has not been proposed at this time. Where applicable, the road name has been indicated as "Proposed Lane".*
- *We re-visited the deeds, plans, etc. related to Mrs. Fisher's concern/comments about the Old County Road. The Fisher and Meleen lots were once part of Higgins land. Higgins owned on the south side of the Old County Road. Similarly, our land was on the north side. When Higgins subdivided, a poorly worded clause was included to grant the*

FINAL

*... 'any and all rights.. in fee or otherwise.. to Old County Road'. The court judgment indicated that Fisher acquired title in fee to the road, but does not indicate to what extent. Fisher would only own fee to the portion abutting their lot, and nothing else (i.e. not including land east of theirs, out to Osgood Road). Furthermore, it is our opinion (and Sterling Heights Builders' attorney) that we own to the center of the old road. We have simply crafted lot-6 to not include any of the old road in front of Fisher/Meleen lots to avoid creating a new lot with a cloudy title due to the poorly worded court judgment.*

With respect to the issue of sight distance, Grasewicz states in his letter that the sight distance could be increased to meet requirements by trimming some grape vines on the side of the road, which appear to be on town property. As far as the installation of speed limit signs, this will have to be petitioned to the Board of Selectmen and coordinated with the Police Department.

Glynda Benham, 46 Osgood Rd, asks if it is ascertained that Ms. Fisher is correct in the land ownership dispute, would the proposed subdivision road need to be moved. Chairman Protano answers that the road would not have to be moved, but, more than likely, lot 6 would be lost, making it a five (5) lot subdivision.

Benham is also concerned with the 300' sight distance. She feels that the trimming of grape vines is not sufficient and asks for clarification as to how sight distance is determined. Grasewicz responds that it is done with the use of surveyor's tools. Several members of the audience express concern for safety on the corner of Osgood Road that this subdivision is proposed for and Chairman Protano states that it is up to the applicant to prove adequate sight distance. If the residents feel that the maintenance of growth on the side of the road is a problem they should contact the DPW with their concerns.

Chairman Protano reviews the traffic count that was recently performed on Osgood Road, stating that during peak times the average is 26 cars per hour. Chairman Protano asks if anyone has seen a police presence on Osgood Road and the audience answers no. Hajdu responds that he has seen cruisers on Osgood Road recently.

Chairman Protano reads into the minutes a letter, dated September 29, 2009, from Haley & Ward which reviews the revised plans of September 27, 2009. The letter is attached as follows;

*Re: Mountain View Lane  
Definitive Subdivision Plans*

*Dear Board Members:*

*Haley and Ward has completed a review of the definitive subdivision plans for Mountain View off Osgood Road. The drawings were prepared by Graz Engineering, LLC and are dated July 29, 2009 with revisions through September 27, 2009. We offer the following comments. The applicant's response is provided. Outstanding issues are shown in a bold font.*

FINAL

1. *The proposed berm should have a vertical height of 6-inches from the finished pavement to the top of the curb to meet your standard requirements.*

*Response: The berm detail has been revised to provide a 6-inch reveal.*

2. *The proposed subdrain on the north side of the roadway should be extended around to the end of the cut section at the cul-de-sac turn around.*

*Response: The subdrain has been extended.*

3. *A ten foot wide street tree easement should be provided outside of the proposed street right of way to allow access to and maintenance of the street trees.*

***Response: This item remains outstanding.***

4. *An easement should be provided at appropriate shared property corners for utility transformers and junction boxes.*

***Response: This item remains outstanding.***

5. *The drainage system from Drain Manhole 5 to the storm water retention pond should be sized to convey a 25 year design storm without surcharging. This is required to meet the pre and post development run off conditions of the subdivision rules and regulations. If this drain segment, once upgraded, cannot transmit a 100 year design storm, the drainage calculation summary should be revised to reflect the appropriate off site flow conditions. As currently proposed, design flows in excess of the 10 year design storm will overflow across Lot 6 toward Old County Road.*

*Response: The applicant has added drainage facilities to collect and control design flows in excess of a 10 year design storm. A swale has been added across Lot 6 to direct excess flows during a 100 year storm in to the storm water management pond. **A drainage easement should be provided for this swale. Dimensions of the proposed swale should also be provided on the plan or detail sheet.***

6. *The cul-de-sac island should be labeled with a 20 foot radius. The surface treatment in the island should be noted.*

*Response: Appropriate notes have been provided.*

7. *The fill sections adjacent to the roadway should have a maximum 3:1 slope.*

*Response: The standard roadway cross section has been revised to show a maximum 3:1 fill slope.*

With respect to Item #3; Grasewicz explains that this item has now been addressed in the latest revised plans dated 9-30-09. At the time of this review letter, Miller had not seen the revised plans. Grasewicz states that a 15' wide easement has been added, entitled "tree and utility easement".

With respect to Item #4; this item is now addressed on the plans and included in the proposed 15' wide easement, noted above.

FINAL

With respect to Item #5; Grasewicz explains that an easement has been created on lot 6 to provide for the swale and the dimensions of the proposed swale are shown on the graded plan, sheet 4. Pichierri asks if it is a permanent swale easement and Grasewicz responds that it is. Chairman Protano asks what will prevent property at the end of Old County Road, downstream from the proposed subdivision, from getting wet. Grasewicz explains the drainage analysis, assuring that the proposed drainage system is adequate to handle stormwater runoff and that existing conditions should even be improved.

Chairman Protano reads a letter into the minutes from the Fire Department, dated September 14, 2009 in which Lt. Kokernak responds to the Planning Board's request for input relative to the existing home (which will now become part of the proposed subdivision) and whether it should be retrofitted with a fire sprinkler system. Lt. Kokernak responds that he would have to know if the house was "substantially renovated" before or after the subdivision plan was filed. If after, then it is considered part of the subdivision and would require a sprinkler system. If before, then there is no code enforcement, but Kokernak would support the Planning Board should they vote to require it.

Chairman Protano reads into the minutes a petition that was submitted to the Board this evening, dated September 28, 2009. This petition is from the citizens of Sterling requesting that the Planning Board delay final approval of the subdivision on Osgood Road until a study has been completed on the impact of development upon wildlife habitat, water resources and quality, as well as the possibility of Native American burial ground in the proposed area of construction. Chairman Protano states that during his time on the Planning Board he has never been given such a petition and is uncertain of the legal procedure and would like to consult with town counsel.

**Williams moves that the Board take no action on the petition that has been submitted at this time, Radzicki seconds the motion. Pichierri asks for clarification as to whether Williams is moving to take no action on the petition or on the approval of the subdivision, Williams answers, the petition. Chairman Protano asks if the board should seek an opinion from town counsel or if Williams' motion is for no action at all. Williams feels it is fine to seek opinion from town counsel. Pichierri would like to amend the motion to take no action at this time, but seek legal counsel. Williams withdraws his motion.**

**Chairman Protano moves that the Planning Board refer the issue of this petition to Sterling Town Counsel to follow the route of the legality of this Board acting for or against any procedure, seconded by Pichierri. No further discussion, all in favor, approved by the Board.**

(Note added after the meeting; with the Town Administrator's permission Stan Weinberg, town counsel, was consulted by Williams and French. Weinberg

## FINAL

stated that the board is under no obligation to act upon this petition other than to consider it within the Subdivision Rules and Regulations.)

Simpson states that there were a couple of other items that the board wanted and submits a copy of the negative Determination of Applicability from the Conservation Commission and a draft Covenant.

Williams addresses the issue of changing the road name and Simpson responds that they have chosen Homestead Lane as a proposed name for the street and the subdivision. The board will consider it and verify that it is not too similar to any other road in town.

Pichierri speaks to the topic of curbing, stating that he feels that the board, at least in part, agrees with the DPW Superintendent's desire to change the regulations back to curbing and catch basins and asks if the existing method of using granite headstones should remain in place for this subdivision. Chairman Protano feels that until regulations are changed the existing plans should remain in place. The Board agrees.

Williams brings up the issue of Section 4443 of the Subdivision Rules and Regulations which refers to private wells, stating that the board has not been following the protocol for subdivision approval with respect to private wells. Williams asks if the board wants to pursue this issue. Radzicki interprets the regulation to state that its purpose is to assure that a new home, without benefit of town water, will have an adequate water source, not how this well will affect a neighbor's well. Chairman Protano asks Simpson to be certain to test the well of the existing home, similar to testing that would be done with new construction.

**Chairman Protano moves that the Board require Simpson to retrofit a sprinkler system in the existing home that will become part of the subdivision, seconded by Williams. Pichierri will abstain from voting due to his past involvement with a similar situation, no further discussion, Williams and Chairman Protano vote yea, Hajdu and Radzicki vote nay. Tie vote, motion failed.**

**Pichierri moves that the Public Hearing be continued to October 28, 2009 at 8:00 PM , seconded by Radzicki, no further discussion, all in favor, approved by the board.**

## **DICUSSIONS AND REPORTS**

- Pat McCarty, McCarty Associates, project manager for Mountain View Estates, off Elm Street in Leominster, has delivered two sets of Mylars (one for each branch of the Worcester Registry of Deeds) to be endorsed by all Planning Board members. This will be done after the close of this meeting.
- Sterling Auto Body –a copy of the variance from the Board of Health for the Water Resource Protection District has been received by the board.

## FINAL

- The site plan for Delcon, 27 Legate Hill has passed its one year period with no significant activity commencing, as per the Building Inspector.

**Radzicki moves to send a letter to the Building Inspector, with a copy to Mark Delvecchio, stating that as per Section 6.4.8 of the Zoning Bylaw the site plan approval has lapsed, seconded by Williams, no further discussion, all in favor, approved by the Board.**

- Baldarelli – Chairman Protano reads a letter into the minutes from the Building Inspector, dated September 24, 2009 which is a follow up to previous letters requesting that Jason Baldarelli contact the Building Inspector’s office to discuss the matter of his operation at 46 Worcester Road, which is being questioned for its use as a “Contractor’s Yard”.

### NOTICES/FYI

- Contractor’s Bond – Chairman Protano updates the board regarding the newly established Contractor’s Bond. After the Town Meeting the Article inadvertently did not get sent to the Attorney General for approval. Flo Coughlin, the acting Town Clerk, was able to talk with the AG’s office and they agreed to allow her to send the Article in now for approval.
- All Boards Meeting – an invitation and agenda has been distributed to all boards for upcoming All Boards Meetings to be held on October 24, 2009 and April 24, 2009. These meetings are a follow up to the All Board’s Meeting held in 2008.
- Auction – a list of items for Town Auction is reviewed.
- Human Resource Position – A memo stating that James Kelley has been hired to fill the new Human Resource position is read.
- Alarm System – It has been confirmed that the new Alarm System in the Butterick Building is automatically activated from 12 Midnight to 6 AM seven days a week. Should a meeting extend beyond midnight; the board will need to obtain the code to de-activate.
- Runaway Brook Road is scheduled to go before the Town of Lancaster for approval of the portion of road that is within Lancaster.
- Department Head Meeting – French gives an overview of the most recent Department Head meeting held on September 22, 2009.
- Board of Selectmen Agenda from September 16, 2009 is reviewed.
- Recorded documents from Ann Desmaris regarding the re-zoning of Leominster Road properties have been received by the board.

FINAL

- A curb cut for 110 Heywood Road was signed by Williams. Its purpose is to provide access to a new garage.

**ZBA NOTICES**

Chairman Protano reviews the latest notices from the Zoning Board of Appeals.

**OTHER BUSINESS**

No other business.

**MAIL**

Miscellaneous newsletters and seminar announcements are reviewed.

**NOTICES FROM OTHER TOWNS**

Public Hearing notices from adjacent towns were reviewed.

**MOTION TO ADJOURN:**

**Williams makes a motion to adjourn the Planning Board Meeting at 10:28 PM.  
Seconded by Pichierri, no further discussion, all in favor, approved by the Board.**

**The next regularly scheduled meeting will be on Wednesday, October 14, 2009 at 7:00 PM.**

**APPROVED BY:**

---

---

---

---

---