

## I. ARTICLES

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THE LANDMARK Holden, Massachusetts

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## STERLING NEWS

## Sterling to get the GIS treatment

BY DANIELLE RAY  
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Open Space Implementation Committee Chairman Brian Cline last week asked selectmen to support a contract that would allow the committee to obtain Geographic Information Systems mapping of Sterling.

Cline has been working with the Montachusett Regional Planning Commission on the digital mapping, which would provide data to create an open space inventory map of the town.

The open space group spent \$185 last year to create four maps in conjunction with an allocation of 16 free hours of assistance from the MRPC.

"We really got a lot of [mapping] for a very low cost, but we are at a point now where we want to finalize some of the maps, and we need to allocate additional funds from our committee," Cline told the board at their August 6 meeting.

Other town committees also would benefit from the mapping, including the Planning Board and the Conservation Commission, Cline said. No specific cost is named in the contract, but instead "sets the stage for boards and committees to spend money as they normally would allocate. Essentially the contract is subject to appropriation," said Cline.

The contract is in final review by MRPC's attorney and selectmen to support the GIS mapping plan pending finalization of the language of the contract and cost analysis.

In other news:

- Cline asked the selectmen for an update on a 79-acre parcel of land near the airport, and was told it has been sold to the Department of Conservation and Recreation. Cline said he was surprised to hear that, and "from a resident's standpoint, I am a little bit concerned. I am not sure that is in line with the intent of the governing body of this town."

Cline said he had voted to put the Chapter 61 land release "into the management hands of the Trust for Public Land," and was not aware it would be sold to the DCR without first being offered to other committees in town such as the Conservation Commission. The parcel provides access to other acreage that the Open Space Implementation Committee and other committees are working to preserve as protected land.

"It came out of litigation, and the price had gone up . . . we decided it would still be conserved if we allowed the DCR to secure the property. It's still a trump card," said Selectman Richard Sheppard.

Town Administrator Terri Ackerman

provided updates on several pending town projects. Ackerman reported that Police Chief Gary Chamberland collected three years of accident data on the Chocksett Road/Leominster Road intersection, and it was sent over to Mass Highway for review in conjunction with the proposed redesign of the intersection.

Also, the temporary skate park in the parking lot of Houghton Elementary has been a great success and will be closing in two weeks, well before the start of the school year, she said. "We have had no complaints at all, which is amazing," said Ackerman.

The FY09 goal-setting has been postponed to the September 3 Board of Selectmen meeting.

- Eagle Scout Tim Hendrickson will be raising the stone wall at Lakeside Cemetery on the corner of Route 140 and Dana Hill Road as part of a Boy Scout project. Hendrickson had asked the BOS for suggestions for a project, and was told this would be an ideal one. The wall had been buried by Mass Highway many years ago during a roadway project, and the Sterling Historical Commission and Department of Public Works have approved Hendrickson's project. He will begin it within the next month or two.

## Naughton forum

The Sterling Democratic Town Committee will host a forum with State Rep. Harold Naughton, Democratic candidate for re-election, on Thursday, August 14, at 6:30 p.m. at the First Church in Sterling, 6 Meetinghouse Hill Road, on the Sterling Town Common. The event is open to the public. Naughton, a Clinton resident who has represented the 12th Worcester District at the state house since 1995, will discuss the issues facing the district and answer questions from voters. Naughton is running in the September 16th Democratic primary against former Lancaster selectman Stephen Kerrigan.

The 12th Worcester district includes the towns of Boylston, Clinton, Northborough, and parts of Lancaster and Sterling.

For more information, visit the [www.sterling-dems.org](http://www.sterling-dems.org).

## Campaign Web site

The new Web site for the Campaign to Re-elect Harold P. Naughton Jr. to the 12th Worcester District has been announced. The new site may be found at [www.haroldnaughton.org](http://www.haroldnaughton.org).

In other news, Naughton announced his endorsement by the The Massachusetts Chapter of the Sierra Club.

# THE Landmark

HOLDEN, PAXTON, PRINCETON, RUTLAND, STERLING

April 30, 2009

Attorney: Zoning could derail Nestlé

BY DANIELLE RAY DANIELLE@LEGACYPHOTOONLINE.COM

STERLING - A needed zoning change may be enough to quash a proposal to pump water from the Wekepeke aquifer residents were told last week.

Nearly 200 people gathered at the Chocksett Middle School auditorium on March 18 for a meeting organized by the board of selectmen to further discuss Nestlé Waters North America's proposal to pump water from the Wekepeke, bottle it, and sell it.

The board called the meeting to give residents the chance to voice their concerns about the pumping, which include potential environmental damage, detrimental impact on private wells in the area, and truck traffic to and from the bottling station that would be built on Route 12.

Nestlé began pump testing at the Spring Basin portion of the aquifer last September. The company's representatives have said that pumping water at a rate of well over 200,000 gallons per day would not negatively affect the water level in the aquifer nor surrounding private wells.

Several attendees asked whether the legislation passed in the late 1800s that allowed Clinton to use the Wekepeke reservoir as a water source could halt the pumping since selling the water was not part of the original legislation.

Special counsel Mark Bobrowski, retained by the board to investigate the legalities associated with this issue, said the matter would be for a court to decide.

"In my opinion [that] is not within the provenance of the Town of Sterling to determine," Bobrowski said. "We don't communicate rights of ownership or the extent to which the property can be used under legislation that was passed back in the 1800s. That's the job of a court of competent jurisdiction. It's not for Sterling's town government to decide that issue. It's the job of a court to look at the legislative history of that enactment from 100 years ago and to render a decision."

Resident James Gettens, a trial lawyer, said he has been investigating the 1800s legislation, and said the law clearly defines that "the withdrawal of water for commercial purposes is illegal. The withdrawal of ground water is illegal under the 1882 act."

Gettens said he has officially notified State Attorney General's office by letter regarding Ch. 14 of the Acts of 1882 authorizing Clinton to utilize "surface waters" for the town's drinking supply. The attorney general "is the legal officer with the power to enforce state law and [can] enforce that act," he said. In the letter Gettens said he's planning a Superior Court action against the Clinton Board of Selectmen if the AG's office fails to uphold Ch. 14 by issuing a cease-and-desist against Clinton.

One way that residents could halt the pumping would be to reject a zoning change to the property, Bobrowski. The nearly 600- acre Wekepeke reservation owned by Clinton is currently zoned as Rural Residential and Farming, which would have to be changed to commercial in order for the pumping to occur. Bobrowski said the zone change would have to be approved by a two-thirds majority at town meeting.

"Is it a correct statement that a vote [against a zoning change] bylaw could end this project?" asked resident Richard Pelle.

"It may put a dent into it anyway," said Selectman Richard Sheppard.

"We need to get all of the information. Right now you have a partial picture," said Bobrowski.

Bobrowski suggested the town hire its own hydrogeologist to conduct further testing on the site to determine if pumping would affect the private wells surrounding the aquifer and also the recharge of the aquifer itself.

"From my perspective, the best possible result is that the hydrogeologist guarantees that it's safe [to pump], not promises you a way to get reparations if it's not; that's not nearly as good," he said. "You want to know before you vote for this that this is not going to harm anyone. And that's really a threshold in terms of town meeting action. If you're not satisfied, you vote no, said Bobrowski.

He said the hydrogeologist would assess whether the proposal has merit.

"If [they] think it's a good proposal, they will so advise the town. If you don't think they're credible, don't vote for it [at town meeting]. If you think that they've done a good job and they've got all the information in hand that satisfies you, maybe it's not that bad of an idea and you vote for it. We're a long way. That hasn't even happened yet. And that process needs to unfold," Bobrowski said.

Mark Dubois, a Natural Resource Manager with Nestlé, said the company is willing to offer a Well Protection Agreement to abutters concerned their wells would be affected by the pumping.

"There is always a lot of concern in the early stages of a project. One issue that comes up over and over again is that people feel like their wells are going to go dry. That's simply not the case. We can't do it by law. It's against the law to impact a neighbor's well," he said. "If people don't trust the aquifer data, we have another accountability tool that we have used in other communities which is a pledge that we will not harm wells or adversely impact them."

Dubois added that Nestlé has programs in place that would enable them to respond rapidly by bringing water to the resident "... if that were to happen. In my 12 years with Nestlé, we've gotten four calls during [drought times]. We've had no impacts to domestic water supplies, but mostly people might have a well that is in jeopardy and during a drought period those wells are subject to going dry regardless of anybody pumping in town. I've never seen an instance where our activities have had an adverse impact on people's wells. Water levels are directly related to precipitation."

"We don't want to just have promises, we want a guarantee," said Pelle.

State representatives Harold P. Naughton Jr. (D-Clinton) and Lew Evangelidis (R-Holden) were asked their opinions on the subject.

"This all originated initially by officials with the town of Clinton concerned about the dams [at the Wekepeke] becoming decrepit, and looking for a revenue stream to try and repair them," Naughton said. "I've expressed publicly to the selectmen in Clinton from the start of this my concerns over the sale of that water. I have a lot of concerns about it."

Evangelidis said: "I've been looking out and trying to determine where Sterling's status is with this situation. The conservation restriction that is in place that has not been signed yet by the town of Clinton, but does exist, makes no comment on their use or their non-use of the lot. It has to do with the land itself ... and does not comment on the water use at all. We are left with the house counsel's decision, which we have...their interpretation of the 2004 legislation clearly does not allow the use of this water to be sold to Nestlé."

Resident Arden Sonnenberg suggested that a committee be formed to specifically address the Nestlé issue.

"We're all pretty much on the same page in terms of trying to get through all the issues. What are we going to do together to manage this situation appropriately? We really should come together as a town," said Sonnenberg.

Heywood Road resident Lynne Philpot asked the selectmen to clearly state each of their stances on the issue.

"I think the town of Sterling ought to buy the land from the town of Clinton," said Selectman Paul Sushchuk. "The fact of that matter is that it is going to come at an expense. It's been an issue since I've been on the board. It's a beautiful piece [of property]. I've walked a good portion of it. I think quite honestly it should be preserved in its natural state.

"The only way that I could consider if we wanted to buy it or own it is if the dams did not have the liability that they currently have," said Sheppard. "[Clinton] is under an order by the Office of Dam Safety to repair them. The repair costs have been estimated at well over a million dollars. I think that would be a very heavy burden to place upon the taxpayers especially in the current economy. We should be, as two communities [Sterling and Clinton], side by side working together on this issue to try to make sure that the outcome of it is to the benefit of both of us but certainly not to the detriment of one of us."

"I grew up on the Wekepeke. I've lived there all my life. I've walked those paths, I've fished those reservoirs and the brook," said Chairman Donlin Murray. The town of Clinton, when they purchased that land, part of their agreement was to keep it upgraded so they could keep their water fresh and clear. After 1964 when they stopped caring for that property, they stopped caring for their property. They walked away from the entire parcel ... it has become a fire hazard. My opinion is that the town of Clinton has neglected their duties in caring for that property. I tend to favor some way of getting it back to the town of Sterling."

Clinton issued a 30-day Request for Proposals on the property last month, which were opened March 21. Nestlé was the only bidder (see related story). According to Tom Brennan, Senior Natural Resource Manager with Nestlé, Clinton issued the RFP "in large part, because of our early interest in the project."

"If Nestlé were to come forward with a proposal, in my opinion it would take a zoning change for this to be accomplished and go forward. If Nestlé were to submit a zoning article, the Board of Selectmen would have 14 days to submit it to the Planning Board. But, I don't think that that's likely to be the case. I am sure [Nestlé] would know that their article would not go anywhere. I don't think anybody from their side is anxious to submit something because they know it would be dead on arrival," said Bobrowski.

At their March 19 meeting, selectmen said they want to hold more forums to continue the dialogue with residents. The board believes the town bylaws ensure the preservation of the aquifer.

"It's a commercial use that won't fit in under the [current] bylaw," said Sushchuk.

The board also said they would like to see the conservation restriction on the property signed by Clinton.