

FINAL

**STERLING PLANNING BOARD
MEETING MINUTES**

January 11, 2012 – Rm. 202 Butterick Bldg.

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

Chairman Protano calls the meeting to order at 7:00 PM.

ANR's.

THOMAS LANE

Al Cormier, D' Boss and Son Builders
Lots 4 and 5.

Al Cormier, D'Boss and Son Builders, is present with an ANR on Thomas Lane. Cormier states that he needs an offset to the property line of Lot 5 for the septic design. To accomplish this he needs a 15' extension into Lot 4. The proposed ANR plan is for the movement of the lot line, with no change to frontage on either lot.

The Board reviews the plan, determines all criteria has been met and notes that the Board would like two additional copies.

Radzicki moves that Mr. Pichierri, on behalf of the Planning Board, endorse a plan of land in Sterling, MA owned by D'Boss & Son Builders, Inc., dated December 2011, done by David E. Ross Associates, Inc. Civil Engineers, P.O. Box 368, 111 Fitchburg Rd., Ayer, MA 01432, Job No. 21711, Plan No. M-6543, Survey: M.S.B., Calc: D.J.L., Drafted: P.J.T., Ck'D: M.D.M., Deed Book 35881-300, N.B. 502-18, Ref: L-9369. Motion is seconded by Pichierri, who states that the applicant should be trusted to bring in the additional two copies the next day. There is no discussion; all are in favor, approved by the Board.

The Board is in receipt of the Form A and a check for \$125.00.

(Note added after the meeting; the applicant provided two additional plans the day after the meeting.)

HEYWOOD ROAD

Charles & Patricia Pillsbury
Book 26545 Pg. 29, land of Charles Pillsbury, Judith Hart & Joyce Poole.
Assessor's Map 43 Parcel 1

James Gaffney, James E. Gaffney Co. and Charles Pillsbury are present this evening with an ANR Plan to create Parcel "A" from the approximately 16.37 acre parcel named

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above. Parcel "A" is proposed to be 3,929 square feet in size, without road frontage. Gaffney states that the reason for the creation of Parcel "A" is to remedy an ongoing issue with the location of the existing septic system, belonging to Charles and Patricia Pillsbury.

Radzicki moves that Mr. Pichierri, on behalf of the Planning Board, endorse a plan of land in Sterling, MA surveyed for Charles A. & Patricia A. Pillsbury, dated December 2011, N.B. 93-96, Plan No. 6756, by James E. Gaffney Co., Professional Land Surveyor, 55 St. Jean Avenue, Leominster, MA 01453, 978-534-3443. The motion is seconded by Pichierri. Pichierri asks if the applicant has provided a sufficient number of plan copies. It is determined that the applicant has provided the correct number of copies. No further discussion, all are in favor, approved by the Board.

The Board is in receipt of the Form A and Agent for Applicant forms for J. Poole and J. Hart. The Board is in receipt of a check for \$100.00.

NORTH COVE ROAD AND SWETT HILL ROAD

Book 19053 Page 291, Worcester South District Registry of Deeds

Assessor Map 129, Lot 25

Owner(s): Andre and Maureen Brouillard

Edward and Patricia Thomas

Continued from 10-26-11, 11-09-11, 11-30-11 and 12-14-11.

Radzicki has not participated in the prior meetings and will not be allowed to vote at tonight's meeting.

Patrick McCarty, McCarty Engineering, is present this evening to continue the review of an ANR Plan on Kendall Hill Road, Swett Hill Road and North Cove Road, the latter being a private way.

At the last meeting, Jamie Rheault, Whitman & Bingham Associates, submitted a Brief, to be reviewed by the Board along with previously submitted items by Rheault, McCarty and Daniel Kloczkowski. Kloczkowski is a resident of North Cove Road. The intention of tonight's meeting is to spend some time reviewing these items and determining what, if any, questions would be prepared to submit to a land attorney for his/her professional review and opinion.

After reviewing these items, the Board agrees that there is a question as to whether these proposed ANR lots should be allowed along a private way. Chairman Protano suggests that the plan be approved with the notation that the lots are not to be considered building lots. The applicant would then have the right to petition the Zoning Board of Appeals (ZBA) for the right to build.

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Pichierri states that he would be concerned as the ANR agent to endorse a plan that does not have legal frontage, being that legal frontage is one of the requirements of an ANR lot.

Chairman Protano invites McCarty to join in the discussion. McCarty states that he fully understands the Conservation process, with regard to the wetlands in the area, and that the ANR Plan approval is the first step in the process of developing these lots. If the ANR Plan is endorsed, then all the necessary steps would have to be put into place to determine if the lots meet the requirements of the Conservation Commission and the Board of Health, as buildable lots.

McCarty questions why the Board is suggesting a different path than the originally intended course of preparing questions for legal counsel. Chairman Protano answers that after reviewing the Brief, and other documentation, the Board may no longer feel that submitting questions to an attorney is the right course of action. Chairman Protano reiterates that the better course might be the ZBA. McCarty asks what he would be taking to the ZBA. Williams answers that if the ANR Plan is endorsed with the notation that the lots are not building lots, then if McCarty takes the plan to the Building Department for a building permit he would be denied, at which point he would take the plan to the ZBA. McCarty states that he would rather continue with the plan to submit the information to legal counsel for an outside opinion.

Chairman Protano agrees that the Board led the applicant to believe that the information would be sent to an attorney and feels that, although the Board may feel differently now, the Board owes it to the applicant to continue with the original plan.

Williams states that another option would be for the applicant to submit information to their own attorney for an opinion, and then present those findings to the Planning Board. At that time, the Board could review the findings and submit the information to an attorney of the Planning Board's choice, if deemed necessary. McCarty states that such a plan would be acceptable to him. Pichierri feels that the original plan, to send the information from the Planning Board to an attorney, would eliminate the middle man and be a better course to take. Williams feels the better course of action is for the applicant to solicit a legal opinion separate from the Board. Radzicki agrees that the original plan is the appropriate action to take; being that the Board indicated to the applicant that that was the direction they were headed. Hajdu agrees with the original plan.

Pichierri moves to send the information directly to Attorney Mark Bobrowski for his legal opinion as to whether or not the proposed lots on North Cove Road have legal frontage, as indicated by Patrick McCarty's letter. The motion is seconded by Radzicki and after some discussion the motion stands, there is no further discussion and a vote is taken. Pichierri – Aye, Williams – Nay, Chairman Protano – Nay, Radzicki – abstains, Hajdu abstains. The motion is denied.

Williams feels that to be fair to the applicant, the Board should allow him to withdraw his ANR Plan without prejudice. This would allow McCarty to gain a legal opinion without any time restraints and resubmit the plan at a later time. McCarty would prefer that the Board continue with the submitted plan and take no further action at this time. Williams

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then suggests that the Board vote to approve the plan with the notation that these lots are not to be considered building lots.

McCarty requests to withdraw.

Pichierri moves to allow the applicant to withdraw without prejudice, seconded by Williams. No discussion, all are in favor, approved by the Board.

The \$175.00 ANR Fee had been submitted by the Planning Board to the town treasurer for processing and will be refunded to Whitman & Bingham Associates.

French wrote a statement, on behalf of McCarty, stating that the request was granted to withdraw the ANR Plan without prejudice. French & McCarty signed the handwritten letter.

MINUTES APPROVED

Pichierri moves to approve the minutes of December 14, 2011, as corrected. The motion is seconded by Radzicki, there is no discussion and all are in favor, approved by the Board.

DAYS WAY – CORINNE MONGIAT

Corrinne Mongiat is present this evening to discuss with the Planning Board the status of Days Way, property located off Newell Hill Road and Trebor Lane. Mongiat is the daughter of Walter Day and one of the trustees of the Day Family Trust.

The following excerpt is taken from the minutes of December 14, 2011, to provide a history:

Donna Day has contacted the Board, claiming that she has documentation to prove that she owns the land off Newell Hill Road that surrounds an existing home owned by the Day Family Trust, of which her late husband's children are the trustees. Donna Day's question to the Board is what is the mailing address of this land, separate from the .2+/- acre parcel with improvements, known as 2 Days Way?

There are 3+/- acres plus a .2+/- acre lot, the latter having an existing home on it. This is the remaining land after sale of what was a larger parcel for the development of the Trebor Lane Subdivision.

Review of the subdivision plans and Orders of Conditions indicate that, at the time of subdivision approval, the Board made a condition that the remaining land was to be combined into one lot and no additional homes could be built.

Day claims that a judge has ruled against this and that she owns the 3+/- acre parcel, separate from the .2+/- acre owned by the Day Family Trust. Donna Day is interested in marketing this parcel of land and wants to know what the mailing address would be.

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The Board has provided her with a copy of the Order of Conditions, stating there cannot be a second home built on this combined lot. Donna Day has been told that the mailing address for the entire parcel is 2 Days Way.

Mongiat is before the Board tonight because she does not agree with Donna Day's statements and claims of ownership. Mongiat is concerned that Donna Day is working towards selling the land and more immediately towards putting up a fence and shutting the water off to the existing home.

There is much confusion as to the legal matters surrounding this land, various transfers, land sales, agreements, who currently owns what, etc.

Chairman Protano reiterates that the Planning Board's intent, when the Trebor Lane Subdivision was developed, was that the existing Day home lot be merged with the remaining land, so that no additional homes could be built. Chairman Protano asks if the court has now somehow gone against that agreement and separated the land. Mongiat responds that the court has ruled against all of Donna Day's attempts to alter the original agreements.

Chairman Protano asks Mongiat what she, and her attorney, would like from the Planning Board. Pichierri reviews a list of questions from Mongiat's attorney, noting that the Planning Board does not have the power to implement some of what is contained in the letter, stating that this issue is one for the attorneys and courts. The Board states that they can provide Mongiat with supporting documentation, only.

A copy of the Trebor Lane Subdivision Order of Conditions, with the condition that the land be merged, and the Certificates of No Appeal for 74 Newell Hill Road and 2 Days Way are given to Mongiat.

Radzicki asks the question; what if the Order of Conditions has been violated? Chairman Protano responds that this matter has now gone to court on both Mongiat and Day's sides and it would need to be straightened out in court.

DISCUSSIONS/REPORTS

Chad Lane

The Board has received, from Carl Corrinne, a "Release of Restrictions of Covenant" for Redstone Heights (Chad Lane). Accompanying the Release is a cover letter, dated December 30, 2011 from Carl Corrinne. A Bond has been previously accepted by the Planning Board, in the amount of \$46,129.00, to secure the construction of the ways and installation of the services on Chad Lane. The Board reviews and signs the Release; French notarizes the Board Member signatures.

Pichierri moves to release the Covenant, seconded by Radzicki, no discussion, all are in favor, approved by the Board.

(Note added after the meeting; Mrs. Corrinne picked up the signed Release of Covenant and its attachments on January 23, 2012.)

At the Planning Board meeting of December 14, 2011 the Board reviewed a letter from Matt Marro, agent for the Conservation Commission, which had attached a review of the Redstone Heights Drainage Report. After review of this material, French asked Marro if

the Con Comm was looking for further information from the Planning Board, and asked Scott Miller, Haley & Ward, Inc., if he had a chance to review the letter. Chairman Protano now reads the responses; Marro is not looking for any additional material and Miller received the letter, but has not reviewed it, so as not to incur any expense for the developer.

Performance Zone I – Land of Debbie Dupuis

George Pape, 69 Redemption Rock Trail, is present this evening with regard to the land, owned by Debbie Dupuis, that is for sale on Redemption Rock Trail. The site is located in the Performance Zone I district. Pape wrote a letter, dated 12-24-11, to the listing broker, of which the Planning Board received a copy. The letter claims that the realtor's listing is inaccurate and misleading to the public, in that she claims the site is zoned single family residential.

Pichierri states that according to the Building Inspector, the lot is grandfathered legal non-conforming. Chairman Protano states that if that is the case, it is "out of the hands" of the Planning Board.

Chairman Protano reads into the minutes the letter from Pape. Pape states in his letter that the Performance Zone I requires 180' frontage for a single family home, 270' for a duplex or 5 acres for a "pork chop" lot. Since Dupuis subdivided her land after the adoption of the Performance Zone I and now has remaining 3.17 acres and less than 180' of frontage, Pape claims she does not have a building lot. Pape does not agree that the land is grandfathered.

(Note added after the meeting; since the discussion with Pape, the Planning Board has asked the Building Inspector if he realized the land was in the Performance Zone I when he stated that it was a grandfathered legal non-conforming lot. Mark Brodeur, Building Inspector, stated that he did not and subsequently re-considered his statement. The Planning Board provided Brodeur with an ANR Plan of the lots involved, approved on 2-12-97. This plan states that the remaining 3.167 acres is "not to be considered a building lot". Based on this information, Brodeur has sent a letter to Darrell Dupuis (Debbie's son) informing him that the land for sale is not to be considered a buildable lot. Should the Dupuis's appeal this decision, they will have to appeal to the Zoning Board of Appeals. The discussion will resume at the Planning Board meeting scheduled for 1-25-12.)

Other Business

At 9:20 Radzicki excuses himself from the meeting.

Prior to Radzicki leaving, Chairman Protano takes the time to read a letter, dated 1-11-12, in which he informs the Board that he has decided not to seek re-election to the Planning Board. See letter attached.

Budget Reduction Memo from T. Ackerman

Chairman Protano reads a memo from Terri Ackerman, Town Administrator, thanking the Department Heads for their budget reduction brainstorming sessions. The results from the brainstorming are attached.

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FY 2013 Planning Board Budget

The FY 2013 Budget has been submitted. A copy of the budget is available for the Planning Board's review.

HMEA

Chairman Protano reads two letters regarding approval of a revenue bond on behalf of the Horace Mann Education Associates, Inc. These letters are from Mass Development and the Montachusett Regional Planning Commission.

GIS Site

Chairman Protano reads a memo from Karen Pare, Stillwater Computer Services, dated 1-4-12, letting Town of Sterling employees know that the Sterling GIS site is up and running. Pare would appreciate review of the site and any comments employees might have.

Holiday Dinner Reminder

The Planning Board's annual holiday dinner is scheduled for 1-18-12 at the Chocksett Inn.

ZBA

The Board reviews the agenda from the January 10, 2012 Zoning Board of Appeals meeting.

The Board reviews a notice from the ZBA stating that a Special Permit was granted to Naugler, 2 Albright Road, for an accessory addition to be added to an existing garage.

CHAIRMAN'S REPORT

Chairman Protano has no other business, other than his letter that he will not seek re-election.

ADMINISTRATIVE ASSISTANT REPORT

French was contacted by Marion Larson, Open Space and Implementation Committee, asking that handouts be provided to all Board members. Larson is scheduled to speak to the Board on 1-25-12. French provides the members with the "7-Year Action Plan Schedule" from the Sterling Open Space and Recreation Plan.

MAIL

Miscellaneous mail was reviewed.

NOTICES FROM OTHER TOWNS

Notices from other Towns were made available for review and were passed on to the Zoning Board of Appeals.

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INVOICES

The board members sign invoices and payroll.

MOTION TO ADJOURN

**Williams makes a motion to adjourn the Planning Board Meeting at 9:59 PM.
Seconded by Pichierri no discussion, all in favor, motion approved.**

The next regularly scheduled Planning Board Meeting is January 25, 2012 at 7:00 PM.

APPROVED BY:
