

STERLING PLANNING BOARD MINUTES – March 8, 2017

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**Present:** John Santoro ~ Chairman  
Michael Pineo ~ Clerk & E. D. C. Member  
Russ Philpot ~ ANR Agent  
David Shapiro ~ Member  
Betty Kazan ~ Administrative Assistant

**Absent:** Charles Hajdu ~ Vice Chairman

Mr. Santoro called the meeting to order at 7:00 PM in Room 202 of the Butterick Building.

### ANR

#### North Cove request for 1 year extension

Mr. Santoro acknowledged receipt of a letter received today, from Brian Marchetti, PE, McCarty Engineering, Inc., requesting a one year extension as outlined in the Memorandum of Understanding between the Planning Board and applicant for an ANR approved on March 11, 2015, on lots 1 through 4 North Cove Road. The reason for the request of a one year extension to March 11, 2018, is in order to install the road improvements outlined in the M.O.U. on North Cove Road. Mr. Philpot stated the M.O.U. is unenforceable by the Board since ANRs cannot be rescinded.

Mr. Pineo moved that the Board grant a one year extension to March 11, 2018 for Owners: Edward & Patricia Thomas, Andre & Maureen Brouillard. ANR Plan Map 129, Lot # 25, North Cove Road and Swett Hill Road, Sterling, MA. Plan prepared by Whitman & Bingham Associates, LLC., 510 Mechanic Street, Leominster, MA, 01453, Plan # 5-G-144, dated February 27, 2015. Mr. Philpot seconded the motion. The motion passed with three in favor and one abstain (Mr. Shapiro).

### Minutes

Mr. Pineo moved that the Board approve the minutes of February 22, 2017 as printed. Mr. Philpot seconded the motion. The motion passed unanimously.

### Warrants & Payroll

Board members reviewed a voucher for payroll.

### Administrative Assistant's Report/Notices

#### Department Head Meeting

Ms. Kazan reported to the Board about a discussion held during the Department Head Meeting wherein Mr. Perry asked everyone to take a look at their respective web page and see what needs to be updated or improved. Mr. Perry hopes that every department/board will be responsible for their own webpage updates, agenda and minutes postings. Mr. Perry stated that he realizes that not all departments and boards would be expected to post their own agendas and minutes. Mr. Perry was going to try posting an agenda and minutes on the Town website to see how easy/difficult the process is. He would notify Virtual Town Hall if he felt they could be of help in making the process smoother. Training for the town website would also be offered to anyone interested.

Planning Board members stated that they were not in favor of Ms. Kazan posting the Planning Board's meeting notices, agendas or minutes to the website. The Board feels it is the

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responsibility of the Town Clerk's office. The Board asked Ms. Kazan to bring any future requests regarding this to the Board's attention.

ANR Procedures & possible future public hearing

Mr. Philpot stated that he had been in touch with Attorney Carolyn Murray of KP Law regarding discrepancies in the revised ANR Procedures/documents and the invoicing of the same.

Mr. Philpot explained that Attorney Murray stated in her email 'KP Law obviously wants the Planning Board to be satisfied with the finished product and do not expect the Board to pay for any services following Ilana Quirk's meeting with the Board to discuss the ANR regulations and forms'. Attorney Murray will pick up where Ilana left off and get the forms back to the Board by March 14, 2017'.

Ms. Kazan will contact Attorney Murray to inquire about credit for any invoices #110718 in the amount of \$612.50 and invoice # 110439 in the amount of \$87.50

Board members agreed to continue review of the ANR documents at their next meeting.

Review Fees

The Board reviewed information of fees and rates of surrounding Towns that has been gathered by Ms. Kazan. No action was taken but the Board agreed to continue discussions at their next meeting.

Response to E.D.C. Recommendation

The Board agreed to have Ms. Kazan forward the following memo to Jim Pattachiola, Chairman of the E.D.C.:

Members of the Economic Development Committee:

The Planning Board thanks you for your presentation and ideas you shared with us. The Board has taken into consideration your "Recommendations for Next Steps" and we look forward to working with you when there are more concrete recommendations and steps available for the Planning Board to take. Once the E.D.C. has developed actionable items we will work with you on executing them.

Discussion ~ Marijuana Dispensaries

After a lengthy discussion the Board agreed to move forward with a public hearing which will be scheduled for Wednesday, March 29, 2017 at 7:05 p.m. Notice of the public hearing will be published in the Telegram & Gazette. Note: Legal ads were placed in the Telegram & Gazette on March 14 and March 21, 2017.

Mr. Philpot moved that the Board vote to support the passage of the following article:

"Adoption of Prohibition On The Use Of Land For Non-Medical/Recreational Marijuana

To see if the Town will vote to amend the Town's Zoning Bylaw to add to the following new section entitled Non-Medical/Recreational Marijuana Establishment as follow:

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NON-MEDICAL/RECREATIONAL MARIJUANA

Consistent with General Laws Chapter 94G, Section 3(a)(2), all types of marijuana establishments as defined in General Laws Chapter 94G, Section 1(j), including all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses for non-medical or recreational purposes, shall be prohibited within the Town of Sterling.

This bylaw shall only take effect in accordance with G.L. c. 40A, §5 and upon approval of a related ballot question at a Town Election.”

Mr. Pineo seconded the motion. The motion passed with three in favor and one no (Mr. Shapiro).

Mr. Philpot moved that the Board vote to support the passage of the following article:

“Adoption Article Temporary Moratorium On Non-Medical Or Recreational Marijuana Establishments

To see if the Town will vote to amend the Town’s Zoning Bylaw to add the following new section entitled “Temporary Moratorium on Non-Medical Or Recreational Marijuana Establishments”, as follows:

TEMPORARY MORATORIUM ON NON-MEDICAL OR RECREATIONAL MARIJUANA ESTABLISHMENTS

Purpose.

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. The law provides that it is effective on December 15, 2016 and as amended on December 30, 2016 via Chapter 351 of the Acts of 2016, requires a Cannabis Control Commission to issue regulations regarding the licensing of commercial activities by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018. Regulations to be promulgated by the Cannabis Control Commission may provide guidance on certain aspects of local regulation of Recreational Marijuana Establishments.

Currently, a Non-Medical or Recreational Marijuana Establishment (hereafter, a “Marijuana Establishment”), as defined in G.L. c. 94G, §1, is not specifically addressed in the Town’s Zoning Bylaw. The regulation of Recreational Marijuana raises novel and complex legal, planning, and public safety issues and the Town needs time to study and consider the regulation of Marijuana Establishments and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Marijuana Establishments and other uses related to the regulation of recreational marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Marijuana Establishments so as to allow the Town sufficient time to engage in a planning process to address

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the effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

### Temporary Moratorium.

For the reasons set forth above and notwithstanding any other provision of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Marijuana Establishments as defined in G.L. c. 94G, §1. The moratorium shall be in effect through June 30, 2018, or twelve months from the date that final regulations are issued by the Cannabis Control Commission, whichever occurs later. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of recreational marijuana in the Town, consider the Cannabis Control Commission regulations regarding Marijuana Establishments and related uses, determine whether the town shall restrict the use of land for any, or all, licenses Marijuana Establishments, determine whether the town will prohibit on-site consumption at Marijuana Establishments and shall consider adopting new provisions of the Zoning Bylaw to address the impact and operation of Marijuana Establishments and related uses.

### Severability.

The provisions of this by-law are severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.”

Mr. Pineo seconded the motion. The motion passed with three in favor and one abstain (Mr. Shapiro).

### **Haley & Ward site visit letter ~ As Built/Acceptance Plan determination for Thomas Lane, D’Boss & Son Builders, Inc.**

The Board was in receipt of comments from Haley & Ward regarding their site visit of Thomas Lane:

*Haley and Ward has reviewed the As-built drawing and visited the site above. As part of the inspection we have compared the As-built drawing to the original contract drawings. In addition before the town accepts the street, we have prepared a punch list (attached) of outstanding items and have the following recommendations:*

### **Thomas Lane:**

1. *Stop sign missing at the intersection of Clinton Road and Thomas Lane. Reference Plan sheet 3 of 5 call out.*
2. *Concrete sidewalk appears to end prematurely along the southwest side of the cul-de-sac. This should be discussed with the contractor.*
3. *Sediment layers and excessive vegetative growth within the forebay and basin shall be removed to ensure continuing function of the basin. Stabilized grass and ground cover*

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shall be promptly re-established if disturbed. Reference Stormwater Maintenance note 3 sheet 4 of 5 of the original drawings.

4. *Several trees have taken root within the berm surrounding storm water basin. These trees should be removed including stumps and roots to maintain the integrity of the berm.*
5. *DPW personnel have noted that the storm water management pond overflows the emergency spillway and berm prior to any significant flow through the outlet pipe. The grades along the top of the berm, spillway and outlet pipe should be confirmed. The outlet pipe should be checked for a proper alignment and grade. The applicant should present its findings and any required response to your Board.*
6. *A defined swale between the pond outlet flare and the wetland resource area receiving water should be established.*
7. *The gate hinge at the storm water pond fencing should be repaired.*
8. *Street lights missing at the intersection of Clinton Road and Thomas Lane. Reference Utilities note 10 sheet 5 of 5 of the original drawings.*
9. *A separate sign placed under the street sign with the word “private” is missing. Reference Utilities note 14 sheet 5 of 5 of the original drawings.*
10. *Unable to confirm the pipe between catch basin 5 & 6 is ductile iron. The catch basin cover should be removed and confirmed in the presence of the Town DPW employee or representative for the town. Reference Special conditions note 11 B sheet 3 of 5 of the original drawings.*
11. *Catch basin traps were also not observed during inspection. Reference Special conditions note 17 sheet 3 of 5 of the original drawings.*
12. *The bituminous berm needs repair in multiple locations.*

We withhold the development of a cost to complete pending resolution of the storm water management pond grades.

Mr. Philpot suggested that one of the Board Members contact Scott Miller particularly on item #5 regarding the DPW notation. Mr. Philpot wanted Haley & Ward, as the Town’s expert to confirm what corrections, if any, are necessary to eliminate flooding problems and protect the taxpayers and Town from accepting a known problem.

Mr. Philpot agreed to contact Haley & Ward to clarify some of their points.

Haley & Ward site visit letter regarding As Build/Road Acceptance Plan determination for Homestead Lane, James E. Simpson

9:25 p.m. Mr. Philpot recused himself from the meeting and will not be returning to the meeting.

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The following comments were received from Haley & Ward:

### **As Built Street Acceptance**

*Haley and Ward has completed a review of the as built and street acceptance plan for the Homestead Lane. The plans were prepared by Graz Engineering, Inc. and are dated February 8, 2017 with revisions through February 28, 2017 (as built) and February 2, 2017 (street acceptance). The applicant has also submitted a request for bond reduction. We offer the following comments. The applicant's response to our prior comments are included. Outstanding items are shown with a bold font.*

1. *The as built plans should show the location of telephone, CATV and power distribution structures.*

Response: These facilities have been added to the plan.

2. *Underground cable and power utilities should be shown schematically on the plan. It may be appropriate for the drawings to note that the actual location of underground utilities are approximate only.*

Response: The underground utilities have been shown schematically

3. *The location, pipe diameter and material of the subdrain material should be shown on the plan.*

Response: This information has been added to the plan.

4. *The recent filing included a request to reduce the performance bond.*

- i) *The unit price values include in the bond reduction request are reasonable values of the Town's cost to complete the items noted*
- ii) *The revised performance bond value should include a 30% mark up as provided by Section 3510 of your Regulations*
- iii) *Due to the current snow cover, Haley and Ward is unable to review the current status of the off-road conditions. Any punch list items presented during a final inspection would have a bearing on the cost to complete.*

**Response: A revised reduction calculation has not been provided.** We are forwarding a punch list and cost to complete estimate under separate cover.

### **Punch list:**

*Haley and Ward has reviewed the As-built drawing and visited the site above. As part of the inspection we have compared the As-built drawing to the original contract drawings. In addition, before the town accepts the street, we have prepared a punch list (attached) of outstanding items and have the following recommendations:*

### **Homestead Lane:**

1. *Driveway Aprons missing for lots 4 & 5.*

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2. *Swale berm in rear of lot 6 is not fully established. The water is currently not channeling run-off into pond as called out on sheet 4 of 7 of the approved plans.*
  3. *Swale established along the north-west side of lot 3 not called out on approved plans.*
  4. *Seeding needs to be completed and grass started on parts of the row.*
  5. *Stone wing wall/check dam is not built on the northwest side of the house on lot 6 as shown on plan sheet 4 of 7 of the approved plans.*
  6. *18" snouts were not observed in catch basins as shown on the catch basin detail sheet 6 of 7 of the approved plans.*
  7. *Erosion control / turf reinforcement mat was not observed on 2:1 slopes as called out on sheet 5 of 7 of the approved plans.*
  8. *Light not observed at the intersection of Osgood Road and Homestead lane as called out on sheet 4 of 7 of the original drawings.*
  9. *A separate sign placed under the street sign with the word "private" is missing. Reference General note 6 sheet 7 of 7 of the original drawings.*
  10. *Drain pipe from DMH 3 to DMH 4 on the as-built drawings show 12" diameter on the construction drawings it calls for 15" diameter. This deviation should be confirmed and the impact on the drainage design presented by the applicant.*

*An estimate of the cost to complete these outstanding items*

| 3/3/2017    |  |                                               |  | <b>Homestead Lane, Sterling, MA.</b> |              |             |                    |  |
|-------------|--|-----------------------------------------------|--|--------------------------------------|--------------|-------------|--------------------|--|
|             |  |                                               |  | <b>Cost to Complete</b>              |              |             |                    |  |
| PAY ITEM    |  | Description                                   |  | Estimated Quantity                   | Unit Measure | Unit Price  | Amount             |  |
| ITEM 125    |  | Swale with Berm                               |  | 42                                   | CY           | \$15.00     | \$630.00           |  |
| ITEM 225.52 |  | Furnish & Install catch basin traps and hoods |  | 10                                   | EA           | \$500.00    | \$5,000.00         |  |
| ITEM 685    |  | Stone wing wall                               |  | 11                                   | CY           | \$600.00    | \$6,600.00         |  |
| ITEM 701.1  |  | Dwy Apron                                     |  | 22                                   | SY           | \$58.00     | \$1,276.00         |  |
| ITEM 765    |  | Seeding                                       |  | 100                                  | SY           | \$1.50      | \$150.00           |  |
| ITEM 767.9  |  | Erosion control mat                           |  | 75                                   | SY           | \$4.00      | \$300.00           |  |
| ITEM 821.12 |  | Furnish & Install street light with arm       |  | 1                                    | EA           | \$2,500.00  | \$2,500.00         |  |
| ITEM 874    |  | Furnish & Install Street name signs w/o post  |  | 1                                    | EA           | \$72.50     | \$72.50            |  |
| ITEM -      |  | Misc. Work and Cleanup                        |  | 1                                    | LS           | \$5,000.00  | \$5,000.00         |  |
|             |  |                                               |  |                                      |              |             | <b>\$21,528.50</b> |  |
| ITEM        |  | Mobilization                                  |  | 5%                                   | LS           | \$21,528.50 | \$1,076.43         |  |
|             |  |                                               |  |                                      |              | Subtotal    | <b>\$22,604.93</b> |  |
|             |  | Regulatory Markup                             |  | 0.3                                  |              | \$22,604.93 | \$6,781.48         |  |
|             |  | Recommended Security                          |  |                                      |              |             | <b>\$29,386.40</b> |  |

Mr. Pineo moved that the Board rescind their vote of February 22, 2017, to approve a voucher in the amount of \$11,341.98 to Sterling Heights Co., Inc. which reflected the approved reduction of

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the Homestead Lane cash Performance Bond. Mr. Shapiro seconded the motion. The motion passed unanimously.

The Board asked Ms. Kazan to mail out the following letter to Sterling Heights Co.:  
Pursuant to the Haley & Ward letter of March 3, 2017, you have a deficiency in the Performance Bond account for Homestead Lane and the Board is unable to refund the \$11,341.98 previously approved. This is due to the revised ‘Cost to Complete’ of Homestead Lane in the amount of \$29,386.40.

Based on this amount your Performance Bond has a deficit of \$4,004.42 (Revised Bond \$29,386.40 less Present Bond \$25,381.98), which will need to be corrected prior to the Planning Board’s next scheduled meeting on March 29, 2017.

**9:55 P.M. MOTION TO ADJOURN**

Mr. Pineo moved that the Board adjourn. Mr. Shapiro seconded the motion. The motion passed unanimously.

**APPROVED BY:**

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