

## STERLING PLANNING BOARD MINUTES – March 29, 2017

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**Present:** John Santoro ~ Chairman  
Charles Hajdu ~ Vice Chairman  
Michael Pineo ~ Clerk & E. D. C. Member  
Russ Philpot ~ ANR Agent  
David Shapiro ~ Member (Arrived at 7:07 p.m.)  
Betty Kazan ~ Administrative Assistant

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

### **Change of Venue**

Mr. Santoro moved that the Board change its meeting venue (location) to the Board of Selectmen meeting room 205 to conduct a Public Hearing. The Board would reconvene in regular session (Room 202) as soon as the hearing is over. Mr. Pineo seconded the motion. The motion passed unanimously.

### **7:05 p.m. ~ Room 205**

### **Public Hearing ~ Amending the Town of Sterling Protective By-laws for the Adoption of Prohibition on the use of land for Non-medical/Recreational Marijuana and for a Temporary Moratorium on Non-Medical of Recreational Marijuana Establishments**

Mr. Santoro called the public hearing to order at 7:05 p.m. in Room 205 of the Butterick Municipal Office Building, 1 Park Street, Sterling, MA for the purpose of amending the Town of Sterling Protective By-Laws for the Adoption of Prohibition On The Use Of Land For Non-Medical/Recreational Marijuana and for a Temporary Moratorium on Non-Medical of Recreational Marijuana Establishments.

A copy of the proposed changes may be viewed in the Town Clerk's Office during regular business hours.

Legal Ads were placed in the Worcester Telegram & Gazette on Tuesday, March 14, 2017 and Tuesday, March 21, 2017.

Mr. Philpot started the discussion by explaining that per Mass General Law Chapter 40A, S.5, the Planning Board's responsibility to hold a public hearing within 65 days of the proposed zoning bylaw being submitted.

Mr. Philpot noted that 'let the record reflect that no one was in attendance from the public'.

Mr. Philpot stated that there should be two warrants articles; one for a Ban on all recreational establishments and one for a temporary moratorium on Non-Medical or Recreational marijuana establishments.

Mr. Philpot went on to explain that the Board of Selectmen at their September 9, 2015 meeting unanimously approved the signing of the letter of support for the Prime Wellness growing facility at 32 Chocksett Road. This letter was sent to the Massachusetts Department of Public Health.

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Mr. Philpot read the proposed articles:

### **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:

#### **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.

### **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 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.

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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.

Mr. Hajdu expressed his concern over the minimal benefit to the community compared to impact brought upon the Town for services of the proposed use. He felt that when the vote for medical marijuana went before the voters they had no idea what the outcome would be relative to recreational marijuana.

Selectmen John Kilcoyne stated that he felt when people went to the polls they were primarily in favor of the medical piece and never foresaw that the recreational use would become a law. He agreed with Mr. Hajdu that had people known about the proposed recreational use, they would not have been in support of the medical use.

Mr. Philpot stated that right now where we stand with the letter of support on behalf of Prime Wellness to locate a medical marijuana facility here in Sterling, and this recreational law as it stands at the time, and taking into account the will of the voters of this Town to not support recreational marijuana the only real option we have as a Town is to pass the prohibition on recreational marijuana because our Attorneys KP Law have put in black in white this afternoon that if we have a medical facility there may not be any opportunity for us to pass a bylaw to prevent recreational facilities. In fact the only thing the Board could do is to pass the prohibition on recreational that would still allow us to have the medical and nothing else, which is where he believes the voters came down. Even though they are separate by the fact three years ago we had no idea what was coming down the pike on this recreational stuff and they obviously have hitched their wagon to the medical horse.

Mr. Philpot stated that the only real option according to KP Law to have medical marijuana facilities without recreational marijuana facilities is to prohibit non-medical or recreational marijuana facilities.

### Article for Adoption of Prohibition On The Use Of Land For Non-Medical/Recreational Marijuana

Mr. Philpot moved that the Board approve the passage of the article as written to adopt a prohibition on the use of land for non-medical/recreational marijuana establishments. Mr. Pineo seconded the motion. After a brief discussion, the motion was modified to include; sending a memo to the Board of Selectmen suggesting that they consider rescinding their letter of support for the Prime Wellness Growing Facility. Mr. Pineo seconded the motion. The motion passed with four in favor and one abstain (Mr. Shapiro).

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### **Article for Adoption of a Temporary Moratorium On Non-Medical Or Recreational Marijuana Establishments**

Mr. Philpot explained that the article on ‘adoption of prohibition on the use of land for non-medical/recreational marijuana’ passes than this article is a mute point. If the article on ‘adoption of prohibition on the use of land for non-medical/recreational marijuana’ does not pass then this Board will need time to develop bylaws to exercise some control over what recreational establishments may want to locate in Sterling.

Mr. Philpot further explained that the way the recreational law was written, we are not without tools. We as a host community have the ability to effect what the state has defined as buffer zone. Under the law, the state has recognized a minimum 500 foot buffer zone between any recreational marijuana establishment and any area where children are known to congregate. It further allows the host community to increase that 500 foot distance but we do not know how far That is. And the term ‘where children are known to congregate’ is not narrowly defined. The next tool we have is to reasonably effect hours of operation. The last thing is we can determine what permits and associated fees may be required for such operations in the Town. We, as a Town need time for example this hearing, then a Town Meeting

The benefit of a moratorium is it allows the Town time to get everything in order.

Mr. Philpot moved that the Board strongly support in lieu of the Prohibition passage of the temporary moratorium of non-medical or recreational marijuana establishments as written. Mr. Shapiro seconded the motion. After a discussion, the motion was amended to amend the previous vote on ‘sending a memo to the Board of Selectmen suggesting that they consider rescinding their letter of support to Prime Wellness’ to ‘sending a memo to the Board of Selectmen suggesting that they consider rescinding their letter addressed to the Massachusetts Department of Public Health of support for the Prime Wellness Growing Facility. Mr. Shapiro seconded the amended motion. The motion passed unanimously.

**7:54 p.m. Mr. Santoro declared the public hearing closed at 7:54 p.m.**

### **7:55 p.m. Reconvene Room 202 Minutes**

Mr. Shapiro moved that the Board approve the minutes of March 8, 2017 as amended. Mr. Philpot seconded the motion. The motion passed with four in favor and one abstain (Mr. Hajdu was not in attendance at this meeting).

### **Warrants & Payroll**

Board members reviewed vouchers for payroll, WB Mason and Haley & Ward.

### **ZBA Notices**

Notice was received from the ZBA that an application from Angela Jackson for a hearing for a Special Permit for purposes of a commercial kennel located at 9 Johnson Road. Hearing is scheduled for April 18, 2017 at 6:15 p.m.

Notice was received from the ZBA that an application from Daniel H. Kloczkowski for a hearing for a Special Permit for purposes of constructing a new single family home located at 14 Myrtle Avenue. Hearing is scheduled for April 18, 2017 at 6:00 p.m.

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### Chairman's Report/Notices/Discussions

The Watershed Protection regulations dated February 24, 2017 were received from the Division of Water Supply Protection of the DCR.

### Administrative Assistant's Report/Notices

#### Scanning of Documents

Ms. Kazan informed the Board that Ricoh had been in to submit their proposal for scanning the Planning Board's documents. The Board agreed to have Ricoh scan some of the files for a sampling of how the scanning process would work.

#### Mass Buy Expo

Ms. Kazan informed the Board that she would be attending the annual Mass Buy Expo in Foxboro scheduled for May.

### ANR Procedures & possible future public hearing

The Board was in receipt of the revised ANR documents from Attorney Carolyn Murray. Due to time limitations, the Board agreed to continue review of the ANR documents at their next meeting.

### Review Fees

No action was taken but the Board agreed to continue discussions at their next meeting.

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

The following were comments received from Haley & Ward in a letter dated March 3, 2017 regarding the Thomas Lane 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:*

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

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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. See pictures on file in Planning Office.*

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

The Board agreed to send a letter to Mr. Al Cormier, D’Boss & Son Builders, Inc. as follows:

*At their meeting on March 29, 2017 the Planning Board determined that you have not satisfied the requirements of Section 3712 and 3713 of the Subdivision Rules & Regulations as follows:*

- 3712.** *Obtain and submit to the Board written evidence, on a check list to be provided by the Board, that the required improvements, as set forth herein, have been completed to the satisfaction of the official listed below:*
  - A. for the planting of any required street trees: Tree Warden;*
  - B. for the placing of monuments and construction of all other required improvements and the performance of all other required work: Planning Board and/or its designated agent;*

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- C. for streets and drainage, as in conformance with the approved Definitive Plan: Planning Board and/or its designated agent;*
- D. for underground wiring, water mains, sanitary sewers, storm sewers, hydrants, fire ponds, and fire alarms, as in conformance with the approved Definitive Plan: Planning Board and/or its designated agent.*

**3713.** *The applicant shall submit written evidence that all of the required improvements stated in Section 3712 have been in place twelve months without damage, or if damage has occurred, that such damaged improvements have been repaired to the satisfaction of the Board.*

*In addition, due to the recent findings of the Town's engineer on March 23, 2017, these will also need to be addressed and resolved as well.*

*Based on all of the above, the Planning Board is not in support of your article for Roadway Acceptance of Thomas Lane.*

*Under the advisement of this Board, we suggest you agree to pass over this article at the Annual Town Meeting.*

*If you have any questions, please contact the office to get on an upcoming Planning Board agenda. Upcoming meeting dates are Wednesday, April 12 and Wednesday, April 26, 2017.*

The following were comments from Haley & Ward regarding Stormwater Basin Checks:

*'On March 23, 2017 representatives from Haley and Ward completed a level survey to confirm elevations around the stormwater basin on Thomas Lane. The drainage manhole located in the sidewalk at station 1+57 was used as a bench mark to compare surveyed elevations to the elevations called out on the proposed and as-built plans. A detail of the as-built plan with spot elevations is on file in the Planning Office.*

*While the elevations measured generally conform to the proposed and as-built elevations in the areas of the overflow weirs and inlet/ outlet pipe inverts, elevations measured along the berm on the North and East sides of the basin are lower than proposed. The berm in this area was measured between 0.5-0.75 feet lower than the proposed berm elevation 100.50'.*

*The plan shows the measured elevations, with low elevations shown towards the downstream side and towards Existing House #171.'*

The Board asked Ms. Kazan to send an email to Ross Perry, Town Administrator as follows:  
*It is the opinion of the Planning Board that this Road Acceptance for Thomas Lane will not make it for approval at this year's Annual Town Meeting.*

The Board agreed to vote not to accept Thomas Lane at their next meeting.

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

No action was taken.

**140 Pratts Junction Road Discussion & potentially vote on action**

The Board acknowledged the following letter addressed to Paul Grasewicz, GRAZ Engineering, regarding 140 Pratts Junction Road, dated March 28, 2017, from Matthew Marro, Field Agent, Conservation Commission was received:

*I would like to thank you and Mr. Spinelli for meeting with me today. To confirm the results of the meeting to ensure that both parties understand what was agreed upon I offer the following:*

- 1. It appeared to me that your storm water system may need catch basin cleaning, notably the basin upstream if the installed downstream defender. You were going to inspect and let me know what, if any, maintenance would be needed.*
- 2. The planting on the final revised plan dated in January of 2014 as approved by the commission and the planning board would be completed this spring. The deadline for this completion is June 30, 2017. This also includes all looming and seeding.*
- 3. The retention basin would be re-loomed and seeded also this spring.*
- 4. All detritus on site would be collected and contained to prevent blowing into the retention basin and any storm water basins.*
- 5. As the plan originally called for paving and re-grind was used, you would examine that to ensure it has the same effect. ( I do concede it was quite established in the site )*

*I have attempted to be as complete as possible. Please let me know if you require further information.*

The Board agreed to send Mr. Joe Spinelli, Spinelli Construction the following letter:

*Dear Mr. Spinelli,*

*The Planning Board has become aware of certain violations of the Approved Site Plan for the subject address and invites you, as that property owner, to meet with us with the hope of resolving these important issues. To that end we have scheduled you to appear before this Board at our regular meeting at 7:05 p.m., on April 26<sup>th</sup>, 2017 in Room 202 of the Butterick Municipal Building. Failure by you to do so may cause the Board to take direction actions on these matters.*

*It is our hope to develop a firm schedule to ameliorate these violations as soon as possible, without incident, and without further action by the Board.*

Ms. Kazan also mentioned that she had sent Mr. Spinelli a letter requesting the replenishment of the 140 Pratts Junction Road Review Fee account in the amount of \$1704.96 bringing the balance in the Review Fee Account to \$2,000.

**Discussion/Bylaws regarding Driveways**

Mr. Philpot explained that once the Board endorses an ANR it cannot be taken back. While we can certainly get awfully close on the maximum 15% grade for access to receive that endorsement, we do not have the ability to make sure it is actually built that way. Un-scrupled builders will know this and find a way to "worm their way past us" with false promises. This is not necessarily a problem for us however since it such enforcement would fall onto others who



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follow us in the building process. The problem is there's nothing to enforce e.g. no by-law affecting the grade of a driveway which can completely undermine the Vital Access Requirement of the Law. If we, as a Board, want our concern to protect & preserve Public Safety and support the concept of Vital Access to lots then we should find a way to ensure any new driveway (or access to any new lot) does not exceed 15% grade.

Section 3.4 "Access" of our PBL's gets us in the neighborhood. Section 3.4.2 "Driveway Access" gets to the brink in the first sentence: "Required off-street parking and loading spaces shall have adequate vehicular access to a street as determined by the Building Inspector or, if site plan review is involved, the Planning Board." Perhaps we should consider modifying this sentence to read: : "**Driveways** and required off-street parking **&** loading spaces shall have adequate vehicular access to a street **and shall not exceed a 15% grade at any point** as determined by the Building Inspector or, if site plan review is involved, the Planning Board." If this modification can be applied, it seems we - the Town - would have something to enforce.

The Board agreed to add this to ‘the list of Bylaw changes to do’.

**10:02 P.M. MOTION TO ADJOURN**

Mr. Philpot moved that the Board adjourn. Mr. Hajdu seconded the motion. The motion passed unanimously.

**APPROVED BY:**

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