

STERLING PLANNING BOARD MINUTES – May 10, 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 7:02 P.M. in Room 202 of the Butterick Building.

### **ANR ~ 1 Heywood Road**

Mark Wheeler of David E. Ross Associates was on hand representing applicants Charles A. & Patricia A. Pillsbury to review an ANR for Assessor's Map 43, Lot 17, 1 Heywood Road, Sterling, MA. Applicant wishes to split a 13.79 acre parcel into two lots; Lot #3 into a 2.008 acre lot and remaining lot of 11.78 acres of Charles A. and Patricia A. Pillsbury.

Mr. Philpot moved that the Board endorse ANR Plan, Map 43, Lot #17, 1 Heywood Road, Sterling, MA. Plan submitted by Charles A. & Patricia A. Pillsbury, prepared by David E. Ross Associates, Inc., PO Box 795, 6 Lancaster County Road, Harvard, MA 01451, Plan #L-13181, dated April 28, 2017. The proposed plan meets the three requirements to receive endorsement of an ANR specifically:

1. It has the minimum frontage for the zoning district of 225 feet required. They have 346.88 feet
2. Heywood is a viable way and also meets the minimum area requirement
3. Vital access exists

Form A completed, with five copies of plan and one Mylar. Mr. Shapiro seconded the motion. The motion passed unanimously. Payment in the amount of \$100 (Check #7275) was received May 8, 2017.

### **Minutes**

Mr. Pineo moved that the Board approve the minutes of April 26, 2017 with corrections. Mr. Shapiro seconded the motion. The motion passed with three in favor and one abstain (Mr. Philpot was not in attendance at this meeting).

### **Warrants & Payroll**

Board members reviewed a voucher for payroll.

### **Planning Board Reorganization & Other Appointments**

The Board agreed to postpone this agenda item until there was a full Board in attendance.

### **Chairman's Report/Notices/Discussions**

#### **4 Kendall Hill Road Zoning Determination**

The Board received a letter from Building Commissioner Sarah Culgin dated April 26, 2017 regarding a zoning determination for a change of use at 4 Kendall Hill Road (currently known as Clearview Farm) which is located in the rural Residential and Farming zoning district. Ms. Culgin states in her letter that in addition to the change of use, this would trigger the requirement of Site Plan Review with the Planning Board prior to application to the ZBA.

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### **MRPC Relocation**

The Board received an email dated May 8, 2017 indicating that this Summer MRPC will move from its current location to its new home at the Doyle Center, 464 Abbott Avenue, Leominster, MA.

### **MRPC TIP Program**

A letter dated April 20, 2017 was received from MRPC regarding MPO Public Participation Program for public review of a draft FFY 2018-2022 Transportation Improvement Program, a draft Montachusett Critical Urban and rural Freight Corridor, and a draft FFY 2017 Transit Amendment #4.

### **Telegram & Gazette Legal Ad Invoice**

Ms. Kazan confirmed that the Planning Board's request to the Board of Selectmen to pay the invoice from T & G for \$176 (public hearing held by the Planning Board on March 29, 2017) was approved for payment.

### **Administrative Assistant's Report/Notices**

#### **Review Fees & Refunds**

Ms. Kazan asked the Board if they would be okay with her initiating paperwork to refund some of the applicants who have completed their projects. She explained that once all the paperwork is in order, she will be requesting the Boards' approval for payment.

Ms. Kazan also mentioned that she like to initiate letters to applicants who have active projects requesting they replenish their review fees to \$2,000. The Board was in agreement with this request.

### **FISHCO – 228 Leominster Street**

Ms. Kazan mentioned she received a telephone call from Fishco stating they wanted to add additional parking spaces to their site plan. Ms. Kazan stated they have to submit a Site Plan Modification.

### **Subdivision Rules & Regulations**

Ms. Kazan updated the table of contents to the Rules & Regulations (correcting the page references) and distributed copies to all Board member. In doing so, Ms. Kazan discovered that in 2007 the Board agreed to revisions of the Subdivision Rules & Regulations at their meeting on August 22, 2007. Shortly after that, the Administrative Assistant (at that time) gave her two week notice. So, as a result, these changes were never carried through to fruition. No public hearing was held.

### **Discussion on house numbering protocol and possible changes to Bylaws**

Mr. Philpot was not at the last meeting but he read in the minutes that the homeowner came in to the Planning Board meeting stating it was a separate unit with separate utilities. Mr. Philpot explained he was included in an email chain from Lt. Korkernak assigning the address of 12 Wilder Road to the apartment in the newly constructed residential building at 14 Wilder Road. Mr. Philpot responded asking if the apartment is legally authorized in accordance with the

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Protective By-laws 2.3.5 and also to please define ‘residential structure’. Lt Kokernak’s response was I will leave it up to the Building Inspector to define the structure and the dwelling. All I can tell you is what we know ~ all we are operating on is what the homeowner told us which is he is putting up a house and wants a separate rental apartment. Shortly after this, the Building Inspector chimed in and said the apartment in question is an accessory apartment for which the ZBA granted a special permit and it is up to interpretation.

Mr. Philpot did speak with Attorney Carolyn Murray about in-law apartments. Atty. Murray stated that every town struggles with this. Mr. Philpot mentioned that he was told the term ‘In-law’ was discriminatory. She said no it is not, the problem in today’s society how do you define a family? For example; you and your wife can live together as husband and wife and never be legally married. One of you parents wants to move in are they family or not? What rules and by whose definition. Mr. Philpot responded he gets it is not a discriminatory thing but it is a social relevance issue.

Mr. Philpot stated in his opinion this could fundamentally transform the town, this is a town primarily of single family homes (not two families). Mr. Philpot thinks the spirit and intention of the Bylaws overall is to preserve that. This accessory apartment, the way it is defined is a rental unit which the homeowner admitted to the Fire Department. So there is a loophole. Mr. Philpot is not stating that anything was done illegally but he clearly disagrees with it.

Mr. Philpot felt the Board needs to define what the goal of the Board’s efforts is. Is it to say anyone can have an accessory apartment and if it becomes a rental apartment? Nonetheless the Town has to exercise some control and protect its interest in preserving this Town. Just food for thought.

Mr. Philpot stated that the Board needs to determine whether this is a goal to strive for and if so to protect. If the Board agrees then the Board needs to determine the path by which to do this. Mr. Philpot feels this is something the Board should strive for.

A discussion for future meetings.

8:00 p.m.

Ron Pichierri request for extension of Primrose Lane Subdivision

Mr. Pichierri stated that he has gotten most of the ‘stuff’ required done on his Primrose Lane Subdivision and is asking the Board for a 120 day extension because it has not been looked at by Haley & Ward and until it is, they may find some deficiencies and Mr. Pichierri would not have any time to resolve them.

Mr. Pichierri presented the Board with the As-Built Plan for Primrose Lane (one copy).

Mr. Pichierri submitted the following hand written letter dated May 10, 2017:

I respectfully request an extension of time to complete the Primrose Lane Definitive Subdivision from May 12, 2017 to September 9, 2017, a total of 120 days, to allow plantings and work to be done during more favorable weather than this past spring. This extension is requested for good cause as the real estate market continues to be ‘soft’,

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*further difficult weather conditions limited surveying and work conditions this spring of 2017.*

*Additional major milestones met;*

*As Build Plan completed to date*

*Six signs installed*

*Concrete Bounds installed'*

*Thank you for your consideration in this matter.*

*Signed: Ronald Pichierri – Applicant, May 10, 2017'*

Mr. Santoro mentioned the Board had given Mr. Pichierri an extension of time last year with about \$3000 in completion items. In addition, Mr. Pichierri provided the Board with a timeline of completion items which obviously have not been done. Mr. Pichierri agreed.

Mr. Santoro also stated his concern over what Mr. Pichierri came up with as outstanding items needing completion. Mr. Santoro stated he wanted Haley & Ward to complete a site review to make sure what we have is what we have. Mr. Santoro's opinion is he doesn't buy the excuse 'because of market conditions'.

Mr. Philpot stated that it does not serve any useful purpose for this Board to engage in any sort of discussion regarding real estate markets because it is not relevant to this decision. Mr. Pichierri asked why the financial status is not relevant to projects like this. Mr. Philpot's response was that question was asked and answered a year ago when I said to you what you can or cannot afford is none of this Board's business. If the Board were to say to you we want to put ten or fifteen more things on there because you have the money and you can afford it. You said to me 'what I can afford is none of your business'. I said exactly my point, we agree, what you can afford is none of our business so, therefore, what you cannot afford is also none of this Board's business. That's a perfect balance which is why the personal finances of you are literally none of the Board's business. Mr. Pichierri disagreed. Mr. Philpot stated that as a member of this Board he does not see personal finances as rising to the standard of Good Cause.

Mr. Pichierri again stated he would not have enough time to complete any items Haley & Ward finds once they conduct a site review. Mr. Pichierri asked what would happen then. Mr. Pineo commented that perhaps he (Mr. Pichierri) should not have waited till the last minute with only two days left.

Mr. Philpot stated that everything required on the Primrose Lane Definitive plan was not complete and the date for completion is May 12, 2017 at the close of business. Mr. Pichierri confirmed.

Mr. Pineo stated the original date for completion was 2004 with three extensions.

Ms. Kazan stated when Mr. Pichierri was before the Board last May, 2016 in his letter requesting and extension he provided a timeline of completion of tasks with all tasks completed in October, 2016. Mr. Pichierri's response was that was on if the extension was granted but the Board did not grant the extension. The Board stated it was granted. Mr. Pichierri stated the extension was

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not granted by the Board so his commitment to the timeline was non-existing. Mr. Pichierri indicated he had to take a legal procedure, file with his lawyer for legal advice of the extension of time.

Mr. Santoro stated that Mr. Pichierri handed to the Board his Attorney's letter during the May, 2016 meeting. Mr. Pichierri disagreed claiming he did not present such a letter. Mr. Pichierri stated he came back for the second meeting on May 5, 2017, which he handed the Board his Attorney's letter with legal opinion regarding the extension. Mr. Santoro stated his opinion that Friday, May 12, 2017 is the date for completion of the Primrose Lane project and a site review by Haley & Ward should be conducted in order for the Board to know if there are any other issues that need to be completed. Mr. Santoro stated that Mr. Pichierri has had a year in which to complete his project. Mr. Pichierri inquired what good this would do the Town. Mr. Santoro asked Mr. Pichierri what is to stop you from coming to the Board in a 120 days and say he would like to privatize Primrose Lane. Mr. Pichierri stated he didn't know as he has never found out how to privatize it. Mr. Santoro stated Mr. Pichierri had been before the Board twice requesting privatization and the Board recommended he seek legal advice. Mr. Santoro asked if Mr. Pichierri ever researched this. Mr. Pichierri answered no.

Mr. Philpot read from the minutes of the Planning Board's meeting of May 5, 2017, which Mr. Pichierri was in attendance. Mr. Philpot read the following (After the Board deliberated.)(Page 3 of 4):

Mr. Philpot made a motion to deny the request for extension of time to November 30, 2016. Mr. Santoro seconded the motion. The motion passed with three in favor, one abstain (Mr. Hajdu), and one opposed (Mr. Williams).

Mr. Pichierri then submitted a letter dated May 5, 2016 from his Attorney Stephen J. Philbin. The following are excerpts from the letter:

'Chapter 240 Section 173 of the Acts of 2010, commonly referred to as the "Permit Extension Act" and the additional extensions granted in 2012 Chapter 238, sections 74 and 75 of the Acts of 2012. These two acts automatically extend for a four year period any permit or approval that was in effect or in existence during the qualifying period, August 15, 2008 through August 15, 2012. In his opinion, the approval of the extension by the Board falls within the applicable period as provided by this statute. The extension of the approval by the March 31, 2011 (Planning Board) letter from May 12, 2011 to May 12, 2013 would be the applicable extension/approval to consider as impacted by these Acts. These Acts provide that an additional four year extension added onto the expiration period of that approval. In this case, the extension period would be extended from the approved expiration date of May 12, 2013 to May 12, 2017.'

Mr. Pichierri stated that he would still like to stick to his projected schedule of completion (six months).

Mr. Philpot moved that the Board contact Town Counsel Kopelman & Paige to review the opinion of Attorney Philbin's letter relative to the Permit Extension Act as it applies to the Primrose Lane Subdivision Project. Mr. Santoro seconded the motion. The motion passed with four in favor and one abstain (Mr. Williams).

Mr. Philpot said that this is exactly what the Board did. We contacted Kopelman & Paige and the Board gave you the year extension. Mr. Philpot stated let's be clear. The Board gave you that extension which expires the day after tomorrow (May 12, 2017). You said to the Board that

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night that you would still like to stick to that schedule of completion (six months). Mr. Philpot asked do we agree you got the year extension. Mr. Pichierri said yes but he got the year because he researched it. Mr. Philpot said that was fine that it was his prerogative to do so. Mr. Philpot then stated that this Board granted you that year. Mr. Pichierri still disagreed. Mr. Pineo then clarified that the Board had to take an action as a Board. The Planning Board's legal counsel told the Board to grant a one year extension and the Board granted this extension which were in the minutes of May 11, 2017. Mr. Pichierri stated he never received a copy of these minutes. Ms. Kazan stated he never requested the minutes.

Mr. Philpot stated this project has been extended out for approximately twelve years. We stand here today with the same reasons that were before us a year ago.

Mr. Philpot stated that there has been a question asked a couple of times during the meeting about 'what benefit will this be for the Town?' Mr. Philpot's personal opinion is that this Board, as a representative of the Town and an agent of the Town has the responsibility to watch out for the best interest of the Town, are we upholding our commitment to the Town by allowing projects to drag on endlessly? Because that is what we have here.

Mr. Santoro asked Mr. Pichierri if someone is living in the house on Primrose Lane? Mr. Pichierri stated he doesn't know, he didn't build it and he doesn't own the land. It is not his business. Mr. Pineo stated he owns the subdivision and if it is not a public way then you do not have allowable frontage correct? Mr. Pichierri stated that is correct.

Mr. Santoro made the motion that Friday, May 12, 2017 is the drop dead date and if it is not finished by this date, then as far as he is concerned it is out of this Board's hands. Mr. Philpot asked if this was a motion to deny the 120 day extension on Primrose Lane. Mr. Santoro said yes. Mr. Philpot seconded the motion. The motion passed unanimously.

### **ANR Procedures & possible future public hearing**

The Board reviewed changes to the ANR documents. The Board agreed to hold off from scheduling a public hearing until they have a chance to research a couple of questions.

### **10:20 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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