

STERLING PLANNING BOARD MINUTES – May 24, 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 7:03 P.M. in Room 202 of the Butterick Building.

### Minutes

Mr. Pineo moved that the Board approve the minutes of May 10, 2017 with corrections. Mr. Shapiro seconded the motion. The motion passed unanimously.

### Warrants & Payroll

Board members reviewed a voucher for payroll. The Board approved vouchers for WB Mason and Haley & Ward (Thomas Lane \$332.84 & Homestead Lane \$1627.24 & Primrose Lane \$442.37). It was noted that the Haley & Ward invoice for Primrose Lane was a partial payment as this was the remaining balance in the Review Fee Account.

The Board asked Ms. Kazan to issue Mr. Pichierri an invoice for \$485.23 which is the amount needed to cover the remaining balance of this invoice for Primrose Lane. The Board also asked Ms. Kazan to send Mr. Pichierri a letter requesting \$2,000 for the Primrose Lane Review Fee Account which is the required balance until completion of the project.

### Site Plan Review Off Pratts Junction Road, Assessor's Map 46, Lot 31, New England Power (A subsidiary of National Grid), Off Pratts Junction Road, Sterling MA

Mike Mullaney of McKenzie Engineering Company was on hand representing New England Power for their Site Plan Review of a proposed Public Utility/Storage Garage Facility: 11,200 SF Steel Framed Structure, metal sided industrial building with flat roof to be used for parking/storage of National Grid electrical power transmission maintenance vehicles, electrical power distribution repair and maintenance materials and office space. Mr. Mullaney stated that in addition to parking, the facility will also be used for "light maintenance" of the vehicles. The Board queried this point and learned that "light maintenance" would not include oil changes, body work, etc., rather it would entail minor repairs to the vehicle equipment e.g. apparatus on the vehicle needed to complete their work of maintaining power lines rather than the vehicle itself. New England Power Co. is not in the truck repair business, it is in the power transmission business. Property is located Off Pratts Junction Road. Mr. Mullaney explained this 85 acre parcel directly abuts the Municipal Light Company storage building.

Mr. Santoro stated that the DPW, Fire, Police, Conservation Commission, and Building Commissioner all have no comments on this project. The Board of Health is meeting on Thursday, May 25, 2017 and will submit their comments after this meeting.

Mr. Mullaney stated there would be 26 parking spaces. There would be no handicap accessible parking spaces as it is not required because this is not a public facility.

## STERLING PLANNING BOARD MINUTES – May 24, 2017

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Mr. Mullaney confirmed there would be no hazardous materials or petroleum based products stored.

Mr. Mullaney stated that lighting would be wall pack lighting consisting of eight fixtures with cut-off shields to keep the light down.

Mr. Mullaney stated the height of the building is 30 feet. **Note:** After the meeting Mr. Mullaney contacted the office to correct his statement to Chairman Santoro regarding the proposed building height of 30 ft. The proposed building height is 23.5 ft. +/- above finish grade; less than the 36 ft. maximum building height allowed in a LI Zoning District. The correct proposed building is noted under “DIMENSIONAL REQUIREMENTS” on drawing C1-2.

The proposed use is for maintenance of vehicles for electric power transmission repairs and storage. He did not know the hours of operation.

Mr. Mullaney confirmed there will be materials stored outside the building. Items such as reels of cable, utility poles but nothing hazardous will be stored outside or inside the building.

Mr. Philpot expressed his concern for outdoor housekeeping being kept organized and orderly. Mr. Mullaney stated that the entire property is going to be fenced in with a 6 foot chain link fence with a security gate which will be closed at all times. Mr. Philpot suggested that the fencing include solid slat inserts to provide a visual barrier and curb appeal.

After providing the project details and responding to all questions from the Board, Mr. Mullaney then requested three waivers from technical compliance with the Town of Sterling Protective By-laws as outlined in the Town of Sterling Protective By-laws Section 6.4.6 Waiver of Technical Compliance with respect to Section 6.4.4 submittals:

#1 That they not be required to provide information on the rear boundary line of the 85 acre parcel since the building is in the front.

#4 That they not be required to show all wetlands and water bodies on the property and within 100 of the property.

#7 Landscaping for screening around the proposed parking lot.

Mr. Philpot moved that the Board grant the requested waivers from technical compliance finding the following pertinent facts:

#1 With such a large parcel (85 acres) and the building being located in the very front portion the setbacks are far more than adequate from all boundaries as required under our Zoning Regulations, and that any setbacks at the rear line would be astronomically (1,800 ft. ±) beyond what is required. Mr. Philpot finds it safe to allow this exception. Mr. Pineo seconded the motion. The motion passed unanimously.

STERLING PLANNING BOARD MINUTES – May 24, 2017

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#4 As the applicant is now not required to show/identify the rear property line it logically goes that they be exempted from showing the wetlands and waterbodies along the rear of the property. Therefore Mr. Philpot finds it safe that any proposed site plan would not impact any wetlands that may encroach upon the back property line since they are close to 2,000 feet away. Philpot noted the wetlands & waterbodies at the front of the property in proximity to the site have been identified. Mr. Pineo seconded the motion. The motion passed unanimously.

#7 Finding that there already exists a natural buffer of trees between the road and the work site which will provide more than adequate screen and that the applicant agrees to loam and seed the area surrounding all the impervious surfaces as defined on the plan Mr. Philpot moved this exemption be granted. Mr. Pineo seconded the motion. The motion passed unanimously.

Mr. Pineo moved to approve with conditions, the proposed site plan for Off Pratts Junction Road, Owners New England Power (A subsidiary of National Grid), 40 Sylvan Road, Waltham, MA 02451-2286 prepared by McKenzie Engineering Co., Inc., 305 Whitney Street, Leominster, MA 01453, Job Number ME-3991, sheets C1-1 through C1-4, Assessor Map 46, Parcel 31.

### **Approval is contingent upon the following conditions:**

1. Waiver to the landscaping requirements for parking and loading areas relative to the Sterling Protective By Laws 3.2.6, and 6.4.4-7
2. The following waivers of Technical Compliance are granted relating to the Sterling Protective By Laws 6.4.4
  - a. Subsection 1 ~ relating to “All boundary line information pertaining to the land sufficient to permit location of same on ground....”
  - b. Subsection 4 ~ Relating to “All wetlands and water bodies on the property and within 100 feet of the property...”
3. Any of the proposed 6 foot high chain link perimeter fence facing the roadway shall have privacy slats to visually screen the development from roadways and abutters.
4. Approval from the Board of Health
5. Applicant will provide information on the hours of operation
6. Materials stored in the ‘yard’ should be arranged, placed and/or stacked and maintained in an orderly manner.
7. Per Sterling Protective By Law 6.4.8 Lapse ~ Site plan approval shall lapse after one year from the granting thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.
8. Within thirty (30) days after completion of the project an As-Built Plan will be submitted to the Planning Board in both paper (5 copies) and digital form (1 CD- pdf format). This is required by Section 6.4.10 of the Sterling Protective (Zoning) Bylaw.
9. Applicant must maintain a Review Fee Account Balance of \$2,000 until item # 8 has been satisfied.

Mr. Santoro seconded the motion. The motion passed unanimously.

## STERLING PLANNING BOARD MINUTES – May 24, 2017

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It was noted that Review Fees for \$2,000 and Administrative Fees for \$600 were received from New England Power Company at the meeting.

Primrose Lane ~ Take actions regarding subdivision

Mr. Santoro stated the thing that is troubling to him about this project is that it has been kicking down the road for quite some time. Mr. Santoro questioned what is the next step for this Board? In Mr. Santoro's opinion the Board has a legal obligation to the Town, to the people that live on Primrose lane. Mr. Santoro stated there has been no inspection done by the Building Department in over a year on 1 Primrose Lane.

Mr. Santoro felt the Board should request a Cash Performance Bond from the applicant with a time limitation to produce. Also, require Review Fees.

Mr. Philpot stated that he had done some research. The reason we do not have a bond on Primrose Lane Subdivision is because in accordance with State Law and part of our Rules & Regulations for Subdivisions that the applicant of the subdivision has a choice of either providing a Bond in various forms or accepting a Covenant. The Covenant, which we have for the Primrose Lane Subdivision, is assigned to the property and registered with the Worcester Registry of Deeds.

Under Section 5 of the Covenant ~ Obligations, Duties, and Rights of the Owner:

- A. *The Owner shall not convey or transfer title to any lot within this subdivision, except as otherwise provided in this covenant, until completion of the construction of ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the Owner provides the Planning Board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the Board.*

(In other words no individual lots can be sold until the Planning Board signs off on the road. Mr. Pichierri has sold one lot.) (Violation #1)

Mr. Philpot continued explaining that while the Covenant prevents Mr. Pichierri from selling any individual lot or lots, he may sell the entire subdivision e.g. every/all lots to a single buyer. In other words, Mr. Philpot explained that the Covenant prevents you from selling anything except the whole thing.

- B. *The Owner shall not build upon any lot within this subdivision, except as otherwise provided in this Covenant, until the completion of the construction of the ways and installation of the municipal services for this subdivision in accordance with the approval instruments, unless and until the Owner provides the Board with another method of securing construction of the ways and installation of the municipal services deemed sufficient by the Board. (Violation #2)*

Mr. Philpot stated that the Board has a copy of the recorded Covenant Book 37300 Page 24 Dated September 13, 2005.

Mr. Philpot then referred to Section 4 Obligations, Duties, and rights of the Planning Board

STERLING PLANNING BOARD MINUTES – May 24, 2017

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- A. *Upon completion of the construction of ways and the installation of municipal services in accordance with the approved instruments, the Planning Board shall release the Owner from this Covenant and shall issue a Certificate of Completion and Release that shall be executed by a majority of the members of the Planning Board and shall be recorded at the **Worcester District Registry of Deeds** by the owner and at the Owner's expense.*

Mr. Philpot explained that this document is a covenant to all the lots in the Primrose Lane subdivision. It says you cannot sell any of the lots and you cannot build on any of the lots until the Board provides the necessary "Release of Restriction" for any given lot or the entire subdivision. One lot has been sold and is now being built upon. We have one problem and that is a residential building permit was issued illegally by the Building Department (Mr. Brodeur). Mr. Santoro agreed to research the building permit for this property and see if who if anyone from the Planning Board signed off on this permit from two years ago.

Mr. Philpot stated that on March 31, 2005 the Planning Board issued an approval letter indicating the Board voted at their meeting of March 30, 2005 to approve the Primrose Lane Definitive Subdivision subject to Order of Conditions. There are General Conditions (boiler plate) and then there are Special Conditions. Under Special Conditions item #22 reads:

*22. Failure by the Applicant to complete the construction of the way and the installation of the services shown on the Definitive Subdivision Plan within four (4) years of the date of endorsement shall result in the automatic rescission of this approval. The time for such construction and/or installation may be extended upon the written request of the Applicant, for good cause shown, prior to the expiration of said four (4) year period, and upon a vote of the majority of the Planning Board then present.*

Mr. Philpot stated that Mr. Pichierri had received a number of extensions through this Board and the Commonwealth of Massachusetts Permit Extension Act. The issue here now is that the time has expired (May 12, 2017) and under Condition #22, the plan shall be automatically be rescinded. Special Condition is quite clear and unambiguous.

The Board has a couple of things in front of them. One being the rescission process which Mr. Philpot has discussed with Attorney Murray. Attorney Murray suggested the Board contact all the property owners and all the mortgagers and notify them of the Board's decision to affect Condition #22 automatic rescission.

This is the grey area ~ under state law Mass General Law 41 section 81W we are required to hold a public hearing. Mr. Philpot is still unclear on an email from Carolyn Murray as she indicated contacting all the players but no mention of a public hearing. Mr. Philpot stated to be on the safe side, the Board should hold a public hearing which will incur additional expenses.

The Board needs to think about the end game when we do this. Right now we have an individual, the applicant that has not bargained in good faith at every step of the way. Mr.

## STERLING PLANNING BOARD MINUTES – May 24, 2017

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Philpot has absolutely no faith that the applicant will find good faith so the Board has to assume the worst. (Rescind this subdivision). He feels at the very least, that the Board would want the road to be completed in full. In a perfect world we could reach back in time and fix from gross errors or negligence on the part of this Board. There are two ways to look at this; Those errors were made by the other Board ~ we weren't here at the time but it still puts the Board in a bad light and it establishes the precedence that we have to battle moving forward.

Let's look back on the design of this subdivision. It touches on the other house pre-existing at 116 Heywood Road. The documents show that Mr. Pichierri applied for and received a building permit to build his house on a lot with frontage on Heywood Road and an address of 114 Heywood Road in October, 2004. He received his building permit a couple of weeks later. In that time period, he initiated the process for a subdivision and received approval of his definitive plan for Primrose Lane on March 30, 2005.

The pre-existing home @ #116 Heywood was included in the Primrose sub-division and appears to violate one of the definitions of the Sterling Protective Zoning ByLaws regarding frontage. Frontage must be along one continuous way and cannot be accumulated by going around corners and so forth. This lot now has approximately 140 feet of frontage along Heywood Road, so it goes around the radius and onto to the cul-de-sac to accumulate the remainder of the required 225'. This is a violation of the ByLaws.

Next under the definition of private access, the house has to be accessed through its frontage. Mr. Philpot took a ride up to Primrose Lane the other day to better understand the driveway access for the homes on Primrose Lane. It appears that three of the four lots in the sub-division all access from a single common driveway off the cul-de-sac. Further, Lot #3 which now holds Mr. Pichierri's home, has all of its frontage on Heywood Rd. Finally, Lot #4, which holds the pre-existing home @ #116 Heywood is a spaghetti lot. The minimum lot width is 50 feet and fifty feet of width goes down and reaches behind Mr. Pichierri's property.

Mr. Philpot stated that the problem he has on top of definitions being violated is that these definitions were violated for a standing member of this Board, which puts this Board in a very poor light. Interestingly enough once the subdivision gets approved, the house that he is already building, he just asks the Board if he can switch over. How does an ANR lot get included in a subdivision?

Mr. Philpot stated that the only leverage the Board has is to initiate the rescission process which starts with letters of notice to all the property owners and mortgagers.

Mr. Philpot stated he felt the Board should send a letter to the Building Department and the Board of Selectmen pointing out the gross violation on the part of the previous Building Inspector for issuing a building permit for a new home to be constructed on a lot that has a covenant preventing construction.

STERLING PLANNING BOARD MINUTES – May 24, 2017

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Recapping:

Mr. Santoro would research and find out whom if anyone from the Planning Board signed off on the Building Permit issued two years ago. The Board would then entertain the idea of sending a memo to the Building Department and Board of Selectmen regarding the issuance of a residential building permit in apparent violation of the Law.

The Board agreed to send letters to abutters and mortgagers. Mr. Santoro will research the mortgagers. Mr. Santoro, Mr. Pineo and Mr. Shapiro will work together to draft a notice of intent to rescind a subdivision and will get it to Ms. Kazan no later than Tuesday, May 30, 2017.

### **James Simpson, Homestead lane ~ request for refund of remaining balance of Review Fees and refund of Performance Bond**

Mr. Philpot recused himself from the meeting as he has an existing business relationship with Mr. Simpson and his company.

James Simpson was on hand to submit a formal request for the remaining balances in the Homestead Lane Review Fee and Performance Bond accounts. Mr. Simpson stated that at the Annual Town Meeting held in May 1, 2017 the Town voted to accept Homestead lane as a public way. He also submitted the recorded Road Acceptance Plan from the Worcester County Registry of Deeds, Plan Book 927, Plan 17, dated May 19, 2017.

Mr. Pineo moved that the Board approve and sign a voucher to refund the Homestead Lane Performance Cash Bond balance of \$25,395.82 (Sterling Heights Co., Inc.) and refund the Homestead Lane Review Fee Account balance of \$372.82 (J.E. Simpson Excavating Co.). Mr. Shapiro seconded the motion. The motion passed unanimously.

### **ZBA Notices**

The Board received a notice from the ZBA regarding an application being filed by Mark & Kelli Vanasse for a Special Permit for 63 Lakeshore Drive property. Hearing is scheduled for June 13, 2017.

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

#### **61A Releases ~ Town Administrator**

Mr. Santoro stated the Board received two requests from the Town Administrator to provide input on two Chapter 61A Release applications; 49 Justice Hill Road and Map/Lot 152-2 Off Route 110. The Board felt they could not weigh in on either of these properties as they were not an agenda item for tonight's meeting and to do differently would be a violation of the Open Meeting Law. The Board agreed to schedule these 61A Release applications for their next scheduled meeting on June 14, 2017.

### **MMPO**

Mr. Santoro acknowledged the draft of the MMPO Transportation Improvement Program FFY2018-2022 Project Summary List.

## STERLING PLANNING BOARD MINUTES – May 24, 2017

### Administrative Assistant's Report/Notices

#### Thomas Lane Update

Ms. Kazan informed the Board that she received clarification from Traina & Traina Insurance Agency regarding the \$95,500. Performance Bond for the Thomas Lane Subdivision. According to Traina & Traina Insurance there is an "Evergreen Clause in this Performance Bond which is statutory in the State of Massachusetts. The following is the section on the Performance Bond which is the Evergreen Clause: 'The Condition of this obligation is such, that if the Principal shall carry out all the Terms of said agreement relating to the site improvements only perform all the work as set forth therein all within the time set forth in said agreement, then this obligation shall be null and void, Otherwise to remain in full force and effect.' Chrystal Sutton of T & T explained to Ms. Kazan that this clause means this Bond is ongoing until such time as the Planning Board submits letter to Traina & Traina releasing this Bond.

Ms. Kazan also mentioned that the Thomas Lane Review Fee account was under the \$2,000 required balance. The Board asked Ms. Kazan to send a letter requesting a check for \$332.84 to bring the balance up to \$2,000.

#### Next Agenda

The Board would like to revisit the required Review Fees and Administrative Fees and asked Ms. Kazan to schedule an agenda for their next meeting.

#### 9:30 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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