

STERLING PLANNING BOARD MINUTES – June 28, 2017

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

**Absent:** Charles Hajdu

Mr. Santoro called the meeting to order at 7:02 P.M. in Room 202 of the Butterick Building.

### **ANR**

Deborah J. Kristoff, Trustee Happy Hollow Realty Trust and Jamie Rheault of Whitman & Bingham Associates, LLC were on hand to discuss the ANR application of property located at John Dee Road, Assessors Map 139 Lot 35. Mr. Rheault explained the ANR would create Parcel A, a non-buildable lot containing 8,687 SF and the remaining land would consist of 2.57 acres.

Mr. Philpot moved that the Board endorse ANR Plan Map 139 Lot 35, provided that it is labeled as ‘a non-buildable lot’ (Parcel A) because it does not meet the frontage or the area requirements of our Zoning Regulations but it has a viable way and appears to have access. Applicant Deborah J. Kristoff, Trustee Happy Hollow Realty Trust, Deed Book 15406, Page 323, John Dee Road Sterling, MA 01564, creating a non-buildable Lot (Parcel A) Plan prepared by Whitman & Bingham Associates, LLC, 510 Mechanic Street, Leominster, MA, Plan #17-C-140, dated June 26, 2017. Check #557 received in the amount of \$75; Form A completed, with one Mylar and five copies of the plan. There was no further discussion. Motion seconded by Mr. Shapiro. The motion passed unanimously.

### **Minutes**

Mr. Pineo moved that the Board approve minutes for June 14, 2017 as amended. Mr. Santoro seconded the motion. The motion passed with three in favor and one abstain (Mr. Shapiro was not in attendance at this meeting.).

### **Warrants**

Board Members signed warrants for KP Law (FY 17) and MRPC (FY18).

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

#### **Email from Building Commissioner re: 180 Pratts Junction Rd.**

Mr. Santoro read an email from Sarah Culgin regarding 180 Pratts Jct. In the email Ms. Culgin inquired as to whether everything is alright with the Planning Board regarding the new building for Hydrotech at 180 Pratts Jct. Road. She mentioned they are looking for a final inspection from her and the owner tells her the fence and seven tall grasses are not installed/planted yet, but otherwise they think they have completed the Board’s requirements. The Board asked Ms. Kazan to email Ms. Culgin inviting her to their next meet to discuss.

### **MRPC Comments Period for UPWP & TIP**

Notice was received from Brad Harris, MRPC regarding a 21 day public review and comment period for the draft Unified Planning Work Program and draft Amendments #5 to the FFY 2017-2021 Montachusett Transportation Improvement FFY 2017 Highway Element.

## STERLING PLANNING BOARD MINUTES – June 28, 2017

### Earth Removal Board – Member Representative Appointment

Mr. Santoro moved that the Board re-appoint Mr. Philpot for a 6 month term to the Earth Removal Board as the Planning Board's Representative. Mr. Pineo seconded the motion. The motion passed unanimously. It was noted that the Board would revisit this appointment in six months.

### Appoint Planning Board member to oversee marijuana laws.

Mr. Santoro and Mr. Pineo agreed to both work on behalf of the Board to oversee the ongoing marijuana laws.

### Homestead Lane ~ Release of Covenant

Mr. Philpot recused himself from the meeting as he has a professional relationship with the applicant and left the room.

Mr. Pineo moved that the Board approve and sign the Release of Covenant on Sterling Heights Builder, Inc., for the Homestead Lane subdivision. Mr. Shapiro seconded the motion. The motion passed unanimously.

Mr. Simpson was also in attendance to sign the Release of Covenant. Mr. Simpson agreed that he would go to the Registry of Deeds and once recorded he would submit a copy of the recorded Release of Covenant to the Planning Board.

Note: Mr. Philpot returned to the Planning Board meeting.

### Administrative Assistant's Reports/Notices

#### Wolters Kluwer ~ Land Use & Planning Law Supplements

The Board agreed to continue subscribing to paper supplement copies of the Handbook of MA Land Use & Planning for now until the Board determines whether or not the booklets are of use to the Board.

### Update ~ Primrose Lane Definitive Subdivision

Mr. Santoro stated that the documents to rescind the Primrose Lane Definitive Subdivision have been signed and submitted to the Town Clerk's office. Copies of the documents have also been sent to the applicants of the subdivision.

Co-Applicant Gail Lent, 35 Heywood Road, was on hand to explain to the Board that she has a copy of the Covenant and Lot #3 was not recorded in the Covenant of that subdivision. Ms. Lent's contention is that Lot #3 should not be part of what is being rescinded.

Mr. Philpot agreed her lot #3 is not part of the Covenant, but the Board rescinded the Subdivision and believed her lot is affected. Ms. Lent stated that she is being told by her legal counsel that this should not be considered part of what the Board is rescinding.

Mr. Philpot commented that she had a good point and the Board would have Town Counsel review it. "If the lawyers all agreed that's wonderful, and if not, perhaps we'll see each other in Court."

## STERLING PLANNING BOARD MINUTES – June 28, 2017

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Mr. Philpot explained that Town Counsel was on vacation until next week and the Board would be in touch with her then and someone from the Board would contact Ms. Lent once Town Counsel gives their opinion. The Board agreed to have Mr. Philpot contact Carolyn Murray of KP Law on the matter and inform Ms. Lent of the results/response.

Mr. Ron Pichierri also spoke with the Board and stated just for clarification when the Board proceeded with its decision process citing Mass General Law Chapter 41 Section 81, I do not remember the letter not.

Mr. Philpot clarified that the Board made it perfectly clear to Attorney Philbin that they were not acting under MGL Chapter 41 Section 81U or 81W (He couldn't remember which one). Rather the Board was proceeding under the terms of the written contract otherwise known as the definitive decision approving the plan in which there are automatic rescission clauses. Mr. Philpot stated that he made it perfectly clear that this Board is not acting under any component or aspect of Mass General Law. The Board agreed with that clarification.

Mr. Pichierri stated that his Attorney remembered that the Board referenced 81U. Mr. Pichierri stated that the point is the Covenant says that the Board should proceed under 81W. Mr. Pichierri stated his point was that 81W is twice said in the Covenant and the Covenant is the law that we are living by here. That is what all signed and that what was recorded. Mr. Pichierri referenced Section 4C of the Covenant: 'the Planning Board may rescind approval of the Definitive Subdivision Plan for breach of any provision of this Covenant or any amendments thereto. Said rescission shall be in accordance with MGL, Chapter 41, Section 81W'. Mr. Philpot stated that under Section 81W you need permission (formal notice) of the property owners to rescind and also need to hold a public hearing.

Mr. Philpot stated again that this Board did not act under any provision of Mass General Law rather the Board acted under the provisions contained in the decision and also the Covenant in Section 5 of the Covenant; Obligations, Duties and Rights of the Owner; Letter D, The owner of reason understands that failure to complete construction of the ways and installation of municipal services by the agreed upon date shall result in the automatic rescission of the approval of definitive plan by the Planning Board. Also contained in the decision is Special Condition #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 explained that these were the points that he discussed with Town Counsel and she is the one who advises this Board. Acting under this, the automatic rescission rather than 81W, therefore the Board is not required to hold a formal hearing, to post a legal notice in the paper and to notify people via certified mail. The Board has the authority under MGL to rescind 81W or 81U but under those we would have to have a formal hearing just as we did when the Board was approving the subdivision. But again, the Board was not acting under MGL.

STERLING PLANNING BOARD MINUTES – June 28, 2017

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Mr. Pineo stated the Board has already voted and made their decision and the certificate of decision has been filed with the Town Clerk's office and there is a 20 day appeal process.

Mr. Philpot confirmed that Mr. Pichierri is right that a Covenant is a written agreement between the applicant(s) and this Board. Contained in this agreement are two other very important clauses both of which have been violated by Mr. Pichierri. 5A. States you cannot sell any lots and Mr. Pichierri sold one. 5B States you cannot build any structures and one is being built.

Mr. Pichierri inquired as to what happens next. Mr. Philpot stated that there is a 20 day appeal process and if there is no appeal filed after the 20 days then the certificate of rescission is recorded at the Registry of Deeds.

Mr. Philpot asked let the record show that Mr. Pichierri did state that he sold that lot a while ago.

### **ANR Procedures & set date for Public Hearing**

Mr. Philpot stated there was one outstanding issue that he wanted to look at and suggested the Board postpone further discussion until their next meeting.

### **Review Fee**

Ms. Kazan has not received the review fees from Rock Breakers even though she has sent reminders and made telephone calls since May 10, 2017. Mr. Philpot will contact Tiffany at Rock Breakers to find out the status.

The Board was concerned that an Occupancy Permit has been issued and yet the As Built has not been submitted or approved by this Board.

### **Discuss Fees and Performance Bonds**

The Board agreed to postpone further discussion until their next meeting.

### **Resignation ~ Charles Hajdu**

Mr. Santoro read the following letter received today, June 28, 2017:

*I would like to resign from my position as Vice Chairman and Member of the Sterling Planning Board, effective immediately. I would like to thank the people of Sterling for giving me this opportunity to serve on their behalf for the past nine years. I have enjoyed my time here. However, due to increasing family obligations, I can no longer fulfill my duties on this Board. I wish the Planning Board every success in the future and thank you again for the opportunity that has been given to me.  
Sincerely, Charles A. Hajdu*

Mr. Pineo moved that the Board accept (with regrets) the resignation of Charles Hajdu. Mr. Philpot seconded the motion. The motion passed unanimously.

Mr. Santoro agreed to bring Mr. Hajdu's letter of resignation to the Town Clerk's office tomorrow morning.

## STERLING PLANNING BOARD MINUTES – June 28, 2017

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### **Procedure for filling vacant position**

Mr. Philpot stated that the Board needs to confirm the process; Planning Board makes recommendation to the Board of Selectmen, Board of Selectmen appoint at the direction of the Planning Board for a term ending 2018. e.g. To complete the time remaining on Mr. Hajdu's term. Perhaps vacancy should be posted on the Town's website.

The Board agreed to have an agenda item for their next meeting to discuss the process in filling the remainder of Mr. Hajdu's term which is up in 2018.

### **Town Planner**

The Board agreed to put this topic as an agenda item for their next meeting.

### **9:00 P.M. MOTION TO ADJOURN**

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

### **APPROVED BY:**

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