

STERLING PLANNING BOARD MINUTES – August 30, 2017

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

**Absent:** Betty Kazan ~ Administrative Assistant

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

### **Minutes**

Mr. Pineo moved that the Board approve minutes for July 19, 2017 with revisions. Mr. Shapiro seconded the motion. The motion passed unanimously.

Mr. Shapiro moved that the Board approve minutes for August 9, 2017 with revisions. Mr. Philpot seconded the motion. The motion passed unanimously.

### **Warrants & Payroll**

Board members reviewed a voucher for payroll. The Board approved a voucher Kopelman & Paige (Primrose Lane \$ 490.00).

### **Discussion with Building Commissioner**

Mr. Santoro acknowledged and thanked Sarah Culgin, Ross Perry, Maureen Cranson, and John Kilcoyne for coming to the Planning Board meeting.

Ms. Culgin updated the Board on the status of the 1 Primrose Lane Building Permit. She confirmed with the Board that to the best of her knowledge no one has ever lived in the house.

Mr. Philpot stated that the Planning Board sent their letter to Ms. Culgin on June 12, 2017, regarding 1 Primrose Lane Building Permit being issued in error and Ms. Culgin issued her letter to the Charettes on July 7, 2017. (Almost a month in time lapse.) The Board discovered that the Covenant on the Primrose Lane Subdivision had been violated. This Board agreed to send the June 12<sup>th</sup> letter to Ms. Culgin, as the Building Commissioner and Zoning Enforcement Officer. The June 12<sup>th</sup> letter specifically cited Mass General Law, Chapter 41, Section 81 U-3 as well as the Town of Sterling Rules & Regulations Governing the Sub-division of Lane Section 3520 and notwithstanding the applicant's failure to comply with General Condition #2 of the Definitive Subdivision Approval and Section 5.B of the Covenant that accompanied this subdivision decision, both of which were recorded in the Worcester Registry of Deeds.

Mr. Philpot further explained that the Board notified Ms. Culgin that this Covenant had been violated by the issuance of a Building Permit from the prior Building Commissioner. Ms. Culgin received this letter on June 12<sup>th</sup> and nearly a month went by before Ms. Culgin reacted and Mr. Philpot would like to know why the reasons Ms. Culgin put in her letter to the Charettes completely ignored the reasons stated in the Planning Board's letter.

Ms. Culgin took issue with the assertion that she ignored the Board's letter and disagreed that a month had passed. Philpot clarified that she made no mention whatsoever in her letter of the

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Board's written reasons for the permit issued in error. As for the time, after checking his calendar, Philpot clarified that Culgin sent her letter on the last business day before the expiration of 4 calendar weeks, which, for him, is a month's time. Further, the letter was erroneously dated July 7th – a Friday, the Bldg. Dept. is closed on Fridays and Ms. Culgin stated the date was a typo. Ms. Culgin explained that time passed, nearly a month, but during that time she met with Maureen Cranson and Ross Perry about this situation and they consulted with Town Counsel about the best way to proceed. Ms. Culgin also mentioned another meeting was held with Mr. Santoro, Ross Perry and Town Counsel (Phone conference) to discuss this. Ms. Culgin stated that we left that meeting with the impression that we should wait until the rescission vote happened on the subdivision.

Mr. Philpot questioned that Ms. Culgin's letter stated that the reason the Building Permit was revoked was due to the subdivision being rescinded and there was insufficient frontage. Ms. Culgin concurred. Mr. Philpot stated that the Planning Board's letter stated that this violates the Covenant which is Mass General Law as well as a local law of the Rules & Regulations for a subdivision and there was no mention of this. So, in short, Mr. Philpot thinks it is a fair point to make that Ms. Culgin ignored the Planning Board's letter.

Ms. Culgin stated that she did not ignore the letter but felt she could accomplish the same thing with the letter she wrote which seemed simpler for the people involved to understand and it was sufficient argument that was reviewed with Town Counsel who said that Ms. Culgin could go with either argument and this seemed to be the clearer of the two.

Mr. Philpot stated here's the situation the Board has right now. If the subdivision comes back and this Board approves it, because of the way you wrote your letter was 'the subdivision was rescinded and now you have no frontage', once this Board approves the subdivision, they have every right to come back to the Building Department and get a Building Permit. Ms. Culgin concurred. Ms. Philpot stated the problem with this Board is we still have a house in violation of the Covenant even though the subdivision is approved. So, there is the problem. Even if we went back.

Ms. Culgin asked what the Board is trying to accomplish. Mr. Philpot stated to correct Ms. Culgin's letter and have it say the reason the permit was revoked was because the house violates the Covenant and the permit was issued in error. Mr. Philpot also mentioned that it says so on the Building Permit; 'All work shall be issued in strict compliance with the permit application, the provisions of the Town of Sterling Zoning Bylaws, and all Bylaws of the Board of Selectmen of the Town of Sterling, approved plans, State Building Codes, and all other laws, rules and regulations which apply. The building permit does not constitute authority to build in violation of any federal, state or local law other rule or regulation.'

Ms. Culgin inquired as to what point the Planning Board felt the applicant could proceed with a Building Permit. Mr. Philpot responded, when this Board votes to approve the plans.

Mr. Ross Perry stated that the Building Commissioner received the Planning Board's letter and sought the advice of Town Counsel. Ms. Culgin's letter to the owner was based on the recommendations of Town Counsel.

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Mr. Philpot read an email he sent to Town Counsel Carolyn Murray dated June 26, 2017:

*Morning Carolyn: It seems to me the subject was clearing the air. It seems to me we have two separate but parallel issues here on Primrose Lane. The first is a matter of the building permit issued in error because it violates the Covenant and the second is the Board's vote to rescind the project. Regardless of whether or not the project was rescinded, the Building Commissioner should take action on the building permit e.g. revoke or suspend it to correct that error and protect the Town. Now that the Board has acted to rescind the project, Zoning issues are brought to bare, specifically certain lots with their frontage on Primrose Lane now become unbuildable as they do not have the required frontage. This has nothing to do with the permit to build issued in error. Nothing more needed. If I have made some errors in my synopsis, please straighten me out. If I have not, perhaps you could provide the necessary adjustment to a number or resistant individuals who exhibit strong and growing hesitations to perform their job and protect the Town.*

*Ms. Murray responded: Russ that is accurate and I did send an email to the BI last week advising of her discretion to take action.*

Again checking his calendar noted Ms. Murray's email to Culgin would have been sent one week after the Board's letter to Culgin.

Ms. Culgin stated that when she discussed the situation with Ms. Murray on what to do, she agreed to wait until the subdivision was rescinded which made more sense because Mr. Pichierri might have asked for an occupancy permit prior to the decision of the subdivision and Ms. Culgin might have had to give it to him (Ms. Murray was not sure). So, it made sense to wait until the subdivision was decided.

Mr. Ross Perry stated that the Planning Board rescinded the action, the Planning Board asked the Building Commissioner to rescind the Building Permit and she did rescind it. Mr. Philpot stated that she did not. Mr. Perry stated he did not understand why this was an issue, everything has stopped. Mr. Perry believes the discussion should be how to get things back on track. Mr. Philpot responded to Mr. Perry that the "issue" is that actions were taken for the wrong reasons (by the Building Inspector) which can cause problems for the Board and the Town later.

Mr. Santoro stated that getting it back on track is going to be a whole new subdivision, point blank. The job of this Board is to work in parallel with everyone but Mr. Santoro does not think everyone is working in parallel. Situations like this would not happen. There seems to be unknown reasons why things do not seem to get done. When the Board makes a decision for the betterment of the Town, Mr. Santoro takes insult from the people who push back from the people who work in this building.

Ms. Culgin stated that she was still confused as why the Board thinks she would issue a Building Permit without financial surety of the subdivision being completed. Mr. Philpot responded because this is a violation which happened initially when her predecessor issued the Building Permit. Why repeat that mistake?

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Mr. Philpot stated he had the answer because Ms. Culgin put it in black and white in her letter to Mr. Charette. Ms. Culgin did not cite the reason for revoking the Building Permit that it violated the surety to the Town, you cited the reason for revoking the Building Permit as his lot did not have frontage. They are two completely separate issues. One has nothing to do with the other.

Mr. Philpot's questioned Mr. Perry's moving this project forward of any interest to the Town Administrator? Why do you have such a keen and focused issue on a subdivision? Is this unique? Mr. Perry did not respond or offer any clarification to Mr. Philpot.

John Kilcoyne stated that we all hear it from the same people in Town. The Selectmen hear it from people if someone is worried about not getting a building, etc. Mr. Kilcoyne feels bad for Mr. Charette. He may be an innocent party (except for not obtaining a title search the right way), but mistakes likes this happen. He hires an Attorney to help and the Attorney doesn't do it on time. He thinks he has got it and he goes ahead and now he is hung out to dry. This is what the Board of Selectmen hear and that is why the BOS cannot act in a vacuum.

Mr. Santoro explained that here you have a project that started in 2005 and in 2017 the project was still not finished. They broke the Covenant, etc. Mr. Philpot stated that the endless continuations of this project were allowed by this Board.

Mr. Philpot stated that if someone has an issue with something that this Board has done, then the response should be 'you know that they are separately elected and go talk to them'. Which brings me back to you, Ms. Culgin. We send you a letter and you do not come to us. Instead you talk to the Board of Selectmen, Town Administrator, Town Attorney, the property owner, the developer of the subdivision, but you never once came to talk to this Board.

Mr. Pineo stated that for legal reasons, Ms. Culgin needs to correct her letter.

Mr. Philpot said if Ms. Culgin wants to expand on her letter then she needs to state that the reason for the revocation of the Building Permit was the violation of the Covenant.

Mr. Philpot pointed out seeing as though there are two thirds of the Board of Selectmen here, that all this communication going on and the Planning Board is not involved in any of it, leaves a very distinct impression that they are trying to 'run around' the Planning Board. It is not a good feeling to have.

Mr. Kilcoyne stated that no one is trying to run around the Board.

Mr. Shapiro asked how we can keep the lines of communication going. Mr. Kilcoyne stated that this was one of the reasons we are here tonight. Mr. Kilcoyne stated that he is the liason person for the Board of Selectmen and will be attending as many Planning Board meetings as he can to keep the lines of communication open between the BOS and Planning Board.

Ms. Cranson wanted to clarify that Mr. Charette never contacted her. The only reason she sat in on the conversation with Town Counsel was for her own education on the subject. Ms. Cranson stated she has always forwarded people to the Planning Board. She has never given her opinion with regards to Planning Board questions.

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Ms. Culgin stated that it is not in the best interest of the Town to have a nearly complete house sit there derelict. Mr. Philpot begged to differ. Mr. Philpot stated that it is of no interest to the Town whether or not that house on Primrose Lane gets finished. In fact this Board is confronted with a very big decision. There's a house that stands illegally and it is the Planning Board's business. Imagine the problem that this Board is confronted with moving forward because frankly Covenants are a very popular vehicle for developers because there is no money out of pocket. The Covenant states that you cannot sell any lots and you cannot build any structures. If a developer doesn't want to accept the Covenant then they can obtain one of the three other options for financial surety. So, most developers take the Covenant approach. Furthermore these financial vehicles and covenants are mandated by State Law which means this Board must accept what the developer chooses. We can't say "we had a bad experience with a Covenant once so we don't accept them", we have no choice because it's a State Law. So, imagine what the Board is going to be confronted with moving ahead with this as a precedent. A Covenant that is flagrantly violated, a lot is sold, a house is built and now we say we don't want to catch anyone in the middle, well then who cares about Covenants for anyone else. That's a big problem.

Mr. Philpot stated that Ms. Culgin's letter needs to be corrected for legal purposes in order to protect this Board and this Town. Ms. Culgin agreed to add to her letter the reasons cited in the Planning Board's letter of June, 2017. Mr. Santoro encouraged frequent site visits from the Building Commissioner and also asked that she report back to the Board should anything arise.

Mr. Philpot added that in the future if this Board sends communications to Ms. Culgin and she has reservations about it, whatever they may be, come to the Board.

Mr. Santoro questioned why a 90 Day Temporary Occupancy Permit given to Hydra Tech prior to final approval of their Site Plan with the Planning Board. Mr. Philpot indicated that there were two other projects as well. Ms. Culgin stated that she issued a Temporary OC and referred Hydra Tech to the Planning Board to finalize issues. The other two were an oversight on her part.

Mr. Philpot suggested that Ms. Culgin not issue any Certificates of Occupancy of any sort until such time as this Board has approved the final As-Built plans. Ms. Culgin expressed her concern that applicants would be disappointed by this. Mr. Philpot suggested she simply refuse the CO and direct them to the Board. She agreed.

Mr. Pineo stated that several years ago there was a sign off sheet and he suggested that this should be implemented again.

Mr. Santoro thanked everyone for coming in.

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Chairman's Report/Notices/Discussions

BOS Policy regarding Town Counsel

The Board of Selectmen request that all Board/Committees/Departments contact the Town Administrator prior to reaching out to Town Counsel. Mr. Kilcoyne explained that there were expenses incurred which got out of hand. Mr. Philpot asked that the BOS take a look at this policy as it relates to elected Boards.

LKQ ~ Rock Breakers

Attorney Campobasso informed the Board that they were given a one year extension to complete the basins behind the building. He believed that extension will be up in October. As soon as basins are completed a final inspection of the site needs to be completed.

Discussion regarding Earth Removal Board

Mr. Philpot stated that the Earth Removal Board will be meeting tomorrow night and will be reorganizing. Mr. Philpot is perfectly willing to stay on the EM Board as a Planning Board Representative but due to the workload for the Earth Removal Board he will not be continuing as Chairman.

Scott Charette discussion regarding Primrose Lane Subdivision

Attorney Vincent Campobasso representing Scott Charette and Jamie Rheault from Whitman & Bingham were on hand. Mr. Campobasso explained that Mr. Charrette came to him about three weeks ago with a letter from the Building Commissioner indicating that his building permit had been revoked. Having no knowledge of this decision he instructed Mr. Charette to go to the Town Clerk's office and file an appeal, which he did.

Attorney Campobasso advised Mr. Charette to make sure he is not living in the house. There will be power used to keep the house heated during the winter months. But Mr. Charette is not living in the house. Attorney Campobasso also advised Mr. Charette to stop talking to any members of the Town. The place to go was the Planning Board to discuss how to resolve this problem.

Attorney Campobasso stated that after obtaining background information about this project, the only solution can be a new subdivision plan which will be presented to this Board. The former developer will give Power of Attorney to Mr. Charette to act on his behalf, Jamie Rheault of Whitman & Bingham will prepare the plans. Mr. Charette will post a bond or surety that this Board requires to accomplish final resolution of the subdivision. Mr. Rheault will prepare the plans and hopefully come in for one of the next two meetings to get the process completed as soon as possible.

Mr. Philpot looks forward to seeing this project move forward. When the Board voted to rescind the subdivision they had no other choice but to rescind. Things were done on this subdivision that were not allowed by any other subdivision. The grey cloud was that the applicant of the subdivision when it was approved was a member of this Board. The other issue as a matter of law MGL 41 81U (#s 1-4) there are 4 vehicles that are the choice of the applicant to provide surety to the Town to make sure that the utilities and roads are properly installed. The Board cannot tell you what to take, we have to accept what you choose and interestingly enough you can choose to change the arrangement of the deal at any point throughout the subdivision. So

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there is an issue with the house and precedent with respect to Covenants. These are the issues that Mr. Philpot sees. Are they insurmountable, he doesn't think so?

Mr. Philpot explained that when a subdivision is created by the approval of this Board to create lots, put in a road and create frontage. So, Step 1 get the subdivision approved. If you put up a Bond (get rid of the Covenant) that would prevent the revocation of the Building Permit.

The Board indicated they look forward to working with Mr. Charette and Attorney Campobasso.

### **Discussion regarding Maser Plan/Master Plan Committee**

Mr. Perry confirmed that the Town will be receiving money from the state that will be sent directly to Sterling in the amount of \$25,000 for technical assistance towards a Master Plan. MRPC is interested in providing this assistance. It is Sterling's choice on whom they contract with. Whether it is internally or externally prepared. If the Planning Board wants to try, a Master Plan Committee would have to be formed. He sent correspondence back in June asking if the Planning Board would like to drive this.

Mr. Santoro asked if the Planning Board should start looking for committee members? Is there a time limit on the expenditure of this money? Mr. Perry stated that deadline is June 30, 2018 for the money to be expended.

Mr. Philpot stated that one of the big decisions of this Board is looking at how to go about a Master Plan. Deciding whether to hire a Town Planner or go with MRPC. Mr. Philpot's personal preference would be to go with a Town Planner. Based on his conversations with some of the Town Planners, if you go with an MRPC you go with the cookie cutter approach. The Board has had two meetings with EDC and MRPC and we were left with cookie cutter approaches.

Mr. Philpot stated that he was not convinced that MRPC would be a good fit. Mr. Perry stated he was not advocating for MRPC. He was just providing a vehicle for the Board to do something. Mr. Perry stated if the Board would like, he could find out if the money could go towards funding a Town Planner. Mr. Santoro inquired are we on the right step towards looking at a Town Planner position? It seems mammoth to have two Boards take ownership of something like this. Mr. Perry stated he has in the past done a Master Plan. It is a tedious, boring, and would suggest the Board contract out or hire a Town Planner.

Mr. Philpot feels that hiring a Town Planner would be the right way to go. Mr. Kilcoyne stated he is not sure a Town Planner is the best idea. He doesn't want to waste everyone time and energy and will it get implemented. Mr. Philpot responded that part of the problem from a developer's perspective is he/she sees all these different Boards where in other municipalities there is expedited permitting. Mr. Philpot stated that we have got to have a vision for the Town. What do we want our Town to look like in thirty years? When new companies come before the Planning Board we ask what attracted this company to our Town.

Mr. Pineo stated that the Town Planner is a good idea. Members of the Board and part timers do not have the time to commit.

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Mr. Philpot suggested that we certainly need someone who can give us direction and has had experience with creating a master plan.

### **Discussion regarding Board Vacancy**

Mr. Santoro stated the vacancy was posted on the Town's website but we have had any interest at this time. Board members agreed to reach out and see if they could encourage participation.

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

Board postpone further discussion until their next meeting.

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

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

### **Condition of General Bylaws**

Mr. Philpot asked Mr. Kilcoyne if the index corrections are being address. Mr. Kilcoyne said it is was being addressed with Mr. Perry. The Board agreed to put this topic as an agenda item for their next meeting.

### **9:50 P.M. MOTION TO ADJOURN**

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

### **APPROVED BY:**

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