

STERLING PLANNING BOARD MINUTES ~ April 10, 2019

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**Present:** Russ Philpot ~ Acting Chairman, ANR Agent  
Michael Pineo ~ Vice Chair & E.D.C. Member  
David Shapiro ~ Clerk  
John Santoro ~ Member  
Craig Miller ~ Member  
Betty Kazan ~ Administrative Assistant  
Domenica Tatasciore, Town Planner

### **Call to Order**

Mr. Philpot called the meeting to order at 7:00 P.M. in Room 205 of the Butterick Building.

Mr. Philpot stated that we are here tonight for Public Hearings. He introduced Attorney Amy Kwesell of KP Law. Mr. Philpot mentioned to the audience that there is an Earth Removal Bylaw (General Bylaw) on the Annual Town Meeting Warrant which we will not be discussing tonight. This is not within the authority of this Board, this Board has authority over changes to the Protective By-laws but not the General By-laws. There are items that we are discussing tonight that are part Protective Bylaws and which relate to the proposed change of the General By-law on earth removal.

Mr. Philpot explained that the process we will go through is; we will ask the sponsor/petitioner to come forward to present their petition to the Board. The Board may have questions to which we will seek answers. Once we have our answers, then we will open it up to public comment and questions. In order to maintain the discipline in the room he asked that you stand up, please state your name for the record and go to the podium. Please do not speak unless the Board recognizes you first.

### **Public Hearing ~ Citizen's petition for Recreational Marijuana Establishments**

Mr. Philpot read the public meeting notice: Pursuant to MGL, Ch. 40A, Sec. 5, the Sterling Planning Board will hold a public hearing on Wednesday, April 10, 2019, starting at 7:05 PM, in Meeting Room 205 at Butterick Municipal Building, 1 Park Street, Sterling, MA 01564 to discuss the proposed amendments to its Protective Bylaws. The subject matter of the proposed amendments are as follows:

#### **a. Marijuana Establishments:**

- a. Amend Article 4, Section 4.9B to allow the co-location of medical and adult use cultivation and product manufacturing facilities for medical marijuana cultivation and product manufacturers operating within the Town prior to January 1, 2019.
- b. Amend Article 2, Section 2.3.1.C. (Table of Principal Uses) use #29 Marijuana Establishments by adding a footnote in the LI zoning district to state "Cultivation and product manufacturing by a duly licensed marijuana cultivator and product manufacturer shall be permitted as ~~a~~ right within the Light Industrial zoning district only by existing licensed marijuana cultivation and product manufacturers operating within Town prior to January 1, 2019.

Sponsor: Attorney Philip Silverman from the Law Offices of Vicente Sederberg, representing Botanist which you may be aware is operating right now at Chocksett Road under the medical law cultivator and medical manufacturer. We want to speak in support of this. He

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wanted to make something clear before he begins to speak about this. We are not seeking to sell recreational (adult) marijuana here in Sterling. This is only about cultivating and product manufacturing and then wholesale this out to other dispensaries outside of Sterling. There will not be dispensing here and should the zoning change and we negotiate a Host Community Agreement with the Town, we will put this promise that there will be no sales in the Town of Sterling in the Host Community Agreement.

Attorney Silverman further explained that the Company is presently employing twenty-five employees and expect under any scenario (just continue medical or able to add recreational) to add another fifteen employees.

Attorney Silverman stated that this operation has worked well in Sterling and he does not believe there are any security concerns that have arisen and the Town has started to receive funding under the medical agreement.

Since the company has been established here, the State has legalized marijuana use and created new regulations for this. So how does this impact Sterling, if they change their Bylaw? From the perspective of the Town, it means the regulations wouldn't be any differently. The security regulations, for example are the same as what you are seeing. It is a limited access facility and under medical you can't set foot in there without having identification and card access. Some employees cannot get into the vault because they just do not have access. Cameras are required on every door, on every window wherever marijuana is handled or stored. Same requirement that you have a redundant alarm system with a back-up system in place. All of the plants are bar coded and constantly inventoried and the same 24/7 monitoring as medical.

Attorney Silverman reviewed some of the benefits to the Town. If this is approved more employees will be hired and under the Host Agreement preference will be given to Sterling residents. The footprint of facility is not changing, just increased production in the facility. The Host Agreement will have substantially more in impact fees that are paid to the Town, up to 3% of the gross revenues. He was estimating (on the low side) \$300,000 in addition to the \$100,000 that the Town gets under the medical.

Mr. Shapiro asked what about the current problem with smells that permeate from the facility.

Mr. Brett Sichlick, Operations Manager for 32 Chocksett Road facility stated that these concerns are being addressed. He indicated that he has met with the group that has made the original complaints. He stated that they are going to incorporate additional charcoal filters to the area that is exhausting from the building in order to mitigate the odor. If this does not solve it, we will deploy additional measures until it is solved.

Mr. Philpot inquired as to how long you go before initiating the next cycle. Mr. Sichlick indicated within a matter of a couple of weeks. Mr. Philpot asked is it possible to eliminate the odor completely. Mr. Sichlick said it is.

Mr. Pineo stated he was in the area today and the smell knocked him over. Today was the worst day.

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Mr. Miller inquired as to what is the percentage of increase in production? Mr. Sichlick stated there would be no increase in production capacity. We are at full capacity at this time. We have no area in which to expand.

Mr. Pineo asked what happens to the product that is not being marketed. Mr. Sichlick indicated that the material that is not being used is ground down, we have a grinder at our facility and mixed with 50% of other disposable materials (like trash) to make sure it is unusable and unrecognizable and it then goes into our dumpsters which are locked and then obviously off to the waste material services.

Mr. Santoro stated the smell needs to be gone. He also expressed concern on any run off of liquid waste. Mr. Sichlick indicated that water goes to septic any run off or condensation is re-captured and re-purposed.

Mr. Philpot asked for one point of clarification. You are now operating a medical growth facility seeking to expand into recreational. One of you just said that you were not going to increase your production. Mr. Silverman indicated that the idea is to be able to switch your market over to the recreational should the medical demands decrease.

Chris Tolford, General Manager of Botanist, in terms of production we operate in the 37,000 square foot building. We are already at full capacity with the number of plants we are growing. In terms of production output from the flower, we are at full capacity. One area that we could see some increased production would be third party processing. We are not looking to expand the facility and are committed to the medical program. We expect to continue the medical even as we go into the recreational market. We always want to ensure that the medical patients have the right products and this is something that we will continue here in Sterling.

The way this article by right is written is that you are 100% medical and 100% maxed out at your production capacity? Six months from now as is by right you could go build a 62,000 SF facility right next to it or attach to it and expand and have this entirely as recreational. Mr. Wolpert stated he did not believe so given their lot. Mr. Philpot stated you could buy a lot next door or somewhere else in Town. Mr. Wolpert stated one thing they have agreed to not having a marijuana dispensary here in Sterling which we would be happy to put in our Host Agreement. We will be happy to state we will not expand any additional cultivation facilities in Sterling.

Mr. Wolpert stated that the goal of this article is really just looking at 32 Chocksett Road. He invited the Planning Board Members to visit the facility.

Mr. Santoro asked how can you add capacity (if you get approved for recreational) as you have already stated you are at full capacity.

Mr. Wolpert explained that they are already growing the maximum number of plants within this facility. Once a plant gets harvested, some of that plant material could be used for traditional smoking or it can also be used through a secondary method of extraction which creates an oil that can be used for other marijuana infused products. This is where we may be able to see some increased production which would be buying third part product that can help supplement.

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Attorney Kwesell clarified that the amendment for the most part is in line with what the statute says that Cities or Towns may adopt ordinances or Bylaws that govern the time, place that govern marijuana accessories. Then it goes on to say except that zoning ordinances or bylaws shall not operate to; 1. Prevent the conversion of a medical marijuana treatment center licenses registered not later than July 1, 2017. Engaged in a cultivation manufacture or sale of marijuana products to a marijuana establishment for the same type of activity. So the statute allows for an RND as you have your cultivation RND to co-locate for adult use. However, she just wanted to point out that this provision, this Bylaw amendment is a bit more permissive as this Bylaw amendment states that its co-location can happen at any establishments that has been established as of January, 2019. So, it is a bit more permissive than the actual statute.

Mr. Philpot stated just to be clear, the State law says July 1, 2017 and what we are being asked to consider and approve is January 1, 2019. Attorney Kwesell confirmed. Mr. Philpot asked would that be considered a violation of the State law or is this something we are allowed to do. Attorney Kwesell stated the Board is allowed to do this because it would be by Bylaw at Town Meeting with the legislative act of the Town.

Mr. Philpot asked what happens if the ownership changes. Attorney Kwesell stated we would have to know more about the actual State license, how it was issued and if it is a parent company.

Mr. Philpot said let's assume this article is approved with Botanist. A Host Agreement is then signed. What happens if a new owner comes in and we have already approved Adult Use in the Town? Do we then have the ability to renegotiate a Host Agreement? Attorney Kwesell stated you could write this in to the Host Agreement. The bigger question would **be will** the CCC allow the transfer. Under the CCC licensing, the new owner has to have a Host Agreement with the Town before the CCC will approve a license.

Mr. Pat Fox stated that although he is a member of the Zoning Board is speaking as a private citizen and is not representing the ZBA. A year or two ago, Prime Wellness appeared before the Board of Selectmen and was adamant then as this organization is now that they would simply be involved in medical marijuana and they were not interested in recreational marijuana for adult use. Now Prime Wellness has apparently been bought out by Botanist and they are just as adamantly saying that they are not interested in retail sales, dispensaries or other activities. Given the history, it is entirely possible that next year that this organization or if they sell out to another organization, wanting to widen the gap even greater with retail sales or other types of activities. Mr. Fox raised a question regarding the wording of the proposed amendment. Mr. Fox indicated it states 'all sorts of activities including marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited.' All of these types of activities are prohibited except for this organization. Mr. Fox says as he reads this, it seems to him that this organization would not be prohibited from marijuana retails or any other type of license.

Attorney Kwesell clarified this is the petitioner's article so it has to go on the Annual Town Meeting Warrant as submitted. They are only changing that an existing cultivator can turn into adult use cultivation and product manufacturing facility. It is at the end of the sentence where it clarifies it. Attorney Kwesell whole heartedly agrees with Mr. Fox that she would have written

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this very differently and made it much clearer. The adult use cultivation is the only thing that would be allowed.

Several additional questions were posed and answered by the sponsor of this Citizens Petition.

Chairman Philpot asked if there was anyone else wanting to make a comment or ask a question, no response.

### **8:19 p.m. Close Public Hearing**

Mr. Pineo moved that the Board vote to close this Public Hearing relative to marijuana establishments. Mr. Shapiro seconded the motion. The motion passed unanimously.

### **8:20 p.m. Recess**

Mr. Philpot stated the Board would take a short recess.

### **8:26 p.m. Reconvene**

### **Public Hearing ~ Rezoning a portion of land on the Westerly side of Route 12, Worcester Road**

Mr. Philpot read the public meeting notice that pursuant to MGL, Ch. 40A, Sec. 5, the Sterling Planning Board will hold a public hearing on Wednesday, April 10, 2019, starting at 7:05 PM, in Meeting Room 205 at Butterick Municipal Building, 1 Park Street, Sterling, MA 01564 to discuss the proposed amendments to its Zoning Map, as most recently amended, by rezoning the following 15 parcels that are currently zoned Neighborhood Residential (NR) to be included entirely within the Town Center (TC) zoning district or take any other action related thereto for the following parcels:

246 Worcester Rd. (Parcel #93-40), 240 Worcester Rd. (Parcel #105-47), 238 Worcester Rd. (Parcel #105-46), 240 Worcester Rd. (Parcel #105-45), 232 Worcester Rd. (Parcel #105-44), 232R Worcester Rd. (Parcel #105-43), 32 Princeton Rd. (Parcel #105-42), 230 Worcester Rd. (Parcel #105-41), 228 Worcester Rd. (Parcel #105-40), Worcester Rd. (Parcel #105-39), 224 Worcester Rd. (Parcel #105-38), 222 Worcester Rd. (Parcel #105-37), 220 Worcester Rd. (Parcel #105-36), 218 Worcester Rd. (Parcel #105-35), 212 Worcester Rd. (Parcel #105-34).

Sponsor: Richard Lane member of the Board of Selectmen. Mr. Lane explained that this collaboration was developed with the Board of Selectmen, the Economic Development Committee. We started looking at this because of the Sterling Inn property. There has been a lot of interest on this property but no takers due to the zoning of Neighborhood Residential. Changing these proposed fifteen parcels from Neighborhood Residential to Town Center allows for more options;

1. Greater commercial uses allowed either by right or via a Special Permit from the ZBA
2. Changing the use of an existing structure or construction a new structure for commercial purposes will require site plan approval from the Planning Board and will need to comply with parking, as stipulated in the Protective Bylaw.

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3. Currently, 1 & 2 family dwellings are allowed in the TC district but require a Special Permit from the ZBA. If rezoned to TC and a residential property is abandoned, there is a 2-year window of protection to rebuild, during which a Special Permit is not required.

Mr. Lane explained that the scope of the article can always be amended on the floor at the Annual Town Meeting but it cannot be expanded. We started with the largest area that we thought would benefit from this zoning change. In addition to allowing the existing uses to explore commercial opportunities, this rezoning will also allow vacant or underutilized properties the opportunity for compatible business uses along the Route 12 corridor that leads directly to Sterling's downtown core.

Mr. Miller asked on the 9 acre parcel are you concerned over no dimensional requirements (no minimal lot size, no minimal frontage) to the size of the lots developed on that property. Mr. Lane stated that they went with the largest parcel because you cannot reduce it. You cannot expand it once approved at Town Meeting. Mr. Lane stated it could be amended on the Town Meeting floor, for instance, to say that Town Center District is only 100 feet from the property line.

Mr. Pineo stated that the large parcel refers to the quarry. Is this within the quarry plan? Mr. Lane indicated it was not. The open access and rights of ways from different parcels into the quarry property. Mr. Pineo stated he will speak with Mr. Perkins to find out if he is opposed to the change.

Mr. Santoro asked on Princeton Road side there is a jog between #54 and #55 if they decide to close the quarry and put a road in with buildable lots what is there to stopping them. Mr. Lane stated one thing that could stop it is an amendment on Town Meeting floor saying that the Town Center District will only go say 100 feet onto parcel #42 or we could amend it to exclude parcel #42 if the voters so decide.

Mr. Philpot inquired as to why is the Town, starting with the Board of Selectmen is so concerned with trying to help people sell personal property. Mr. Lane stated the BOS concern is with the character of the Town. Mr. Philpot stated there are other means that could be applied to eliminate that situation. Such as the nuisance Bylaw. Mr. Lane stated it is difficult to enforce. Mr. Philpot's concern is that we may be setting some sort of precedent here by rezoning things to help a private property owner make their property more saleable. Mr. Lane stated that we are not rezoning to help the private property owner. This was not the attitude of either the EDC or the BOS. It is being rezoned to help improve the character of the Town and to add to the viability of the Town by changing the Route 12 corridor.

Mr. Philpot stated as Mr. Miller had previously mentioned, there is no minimum requirements for lot size or frontage and also the side yard setbacks are reduced. What this can add up to is population density can increase dramatically and as a Town we cannot say to somebody you can't put a residential structure in there because it is certainly allowed. Mr. Philpot stated that he is a little leery because it is not all going to be commercially developed. Residential development is certainly allowed and with the population density with virtue of the smaller area (less area, less frontage, less side setbacks) we could end up with something that is not necessarily helpful. Mr. Philpot asked Mr. Lane how he would respond to this. Mr. Lane stated he did not feel it needed a response.

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Mr. Pineo stated he hopes this gets the EDC back on track to where they were looking at the rezoning and bringing potential to the Town.

Mr. Miller asked about two lots on the other Worcester Road side as it intersects with Princeton Road that were not included in this proposal. Mr. Lane stated it was part of the discussion. They were not included because one address was Princeton Road and the other was West Princeton Road. We had to stop somewhere.

Mr. Pattachiola, Economic Development Committee stated the EDC goals were to try to make zoning uniform so that business can come to Town.

Mr. Protano stated he believes that the West Side of Route 12 should be next for rezoning.

Christopher McDermott, Public Affairs Manager for North Central Mass Chamber of Commerce read a letter of support from the NCM Chamber of Commerce. The following is a portion of that letter:

“My reason for speaking before you today is to express the Chamber’s support for the proposed zoning bylaw amendments which you are currently reviewing. Bordered by Leominster, bisected by I-190, and a short ride from Worcester, we believe Sterling represents the ideal place to live, work or visit. However, at the heart of any community, is its downtown. A thriving, walkable civic center is the measure by which many people judge a city or town. These neighborhoods serve as a community’s “living room”, and provide both residents and passer-by a place to gather, do business, and relax. These proposed amendments further your ability to attract the entrepreneurs and developers a neighborhood of this type need! Specifically, by extending the Town Center Zone to include the historic Sterling Inn, these recommendations take an important step towards the revitalization of a regional landmark. Though it has been vacant for roughly a decade, potential investors have expressed interest in the century-old establishment. These proposals would allow a restaurant by right and a hotel or bed and breakfast by special permit. This eliminates a major hurdle for those considering the property, clearing the path for a viable business plan which makes use of this beautiful structure. With this in mind, we at the Chamber ask that you vote to support these proposals and lend them your recommendation before Town Meeting. We look forward to working with the Town as a partner in growth and greatly appreciate this opportunity to speak.”

Mr. Joe Curtin stated he was in agreement that the changes are necessary however, he cautioned against making them at this time. The Selectmen have appointed a Master Plan Committee that is well on the way of work with the Town’s objectives. At their last meeting they appointed an Affordable Housing Production Plan Committee to work on the Affordable Housing Plan which has not been updated until 2005. He feels it would behoove the Town to just rein it in until we get the results of the Master Plan and or the Affordable Housing Plan because it could be a completely different zone than proposed.

Several other questions were asked by people in attendance.

Chairman Philpot asked if there was anyone else wanting to make a comment or ask a question, no response.

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9:14 p.m. Close Public Hearing

Mr. Shapiro moved that the Board vote to close this Public Hearing relative to rezoning a portion of land on the Westerly side of Route 12, Worcester Road. Mr. Pineo seconded the motion. The motion passed unanimously.

Mr. Philpot reminded everyone in attendance that two weeks from tonight, this Board will meet at 7 p.m. in Room 202 to discuss and vote to take positions on each Article discussed tonight. This position will be to support passage, to not support passage or to amend the article and recommend passage.

Public Hearing ~ Amendments to Protective Bylaws relating to Earth Removal

Mr. Philpot read the public meeting notice pursuant to MGL, Ch. 40A, Sec. 5, the Sterling Planning Board will hold a public hearing on Wednesday, April 10, 2019, starting at 7:05 PM, in Meeting Room 205 at Butterick Municipal Building, 1 Park Street, Sterling, MA 01564 to discuss the proposed amendments to its Protective Bylaws. The subject matter of the proposed amendments are as follows:

1. Quarrying or Mining:
 - a. Amend Article 2, Section 2.3.1.D. (Table of Principal Uses) to delete the following use #7 “Earth removal” and to replace herewith with a new use, #7 “Quarrying or Mining” with no alteration of use in the zoning districts, it would remain permitted in the LI zoning district and would not be permitted in the RR, NR, C and TC zoning districts. The existing footnote #1 would remain as it refers to the Earth Removal Bylaw in the General Bylaws.
 - b. To amend Article 5, Definitions, by inserting, in alphabetical order, a new definition for “Quarrying or Mining” and by deleting the existing definition of “Earth Removal”;
 - c. To amend Article 3, Site Development Requirements, Section 3.3.2, Erosion Control, subsection 3.3.2.2 by inserting at the beginning of the subsection the following new text: “With the exception of where an Earth Removal permit has been issued,”;
 - d. To amend Article 6, Administration and Procedures, Section 6.2, Board of Appeals, by deleting subsection 6.2.2.2.a.4. in its entirety, whereby a use variance would be required from the Board of Appeals for earth removal in the RR and NR zoning districts.

Sponsor: Richard Lane, Board of Selectmen. The purpose of this petition is to remove conflicts between the current Protective Bylaw and the proposed Earth Removal Bylaw that will be proposed at Town Meeting. Mr. Lane explained that KP Law assisted in crafting the two laws.

Mr. Shapiro asked what happens if the proposed Earth Removal Bylaw is not passed at Town Meeting. Mr. Lane stated there would be no action (tabled at Town Meeting).

Mr. Pineo asked earth removal vs quarrying and mining. Mr. Pineo asked if there is still an agricultural exception in this change. Mr. Lane said yes.

Mr. Pat Fox on behalf of the Zoning Board stated the Board had some minor concerns regarding the Protective Bylaw Section 2.2.1 in which a portion of it states ‘no land shall be used except as set forth in Section 2.3, “Use Regulation Schedule”, unless exempted by this by-law or by

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statute'. The ZBA is not objecting to adding a use for quarrying or mining and furthermore does not object to the definition. But we thought it would be preferable to also leave in, rather than delete the use of Earth Removal as well as the definition. By leaving this language in, it would not prevent or hinder in any way the operation of the new earth removal law.

Mr. Fox referred to Site Development Requirements, 3.3.2.2, the wording 'Any construction which will expose more than 60,000 square feet of bare earth during development through either removal or filling on the same parcel or on contiguous parcels in the same ownership must comply with subsection a through h'. Mr. Fox referred to a – Stripping of vegetation, regrading or other development shall be done in a way that will minimize soil erosion. He will not read all of them but it is the ZBA's impression that the Town should keep all of them as all of them are good things. Suggest they be left in the Town's Protective Bylaw as they do not conflict with the proposed changes.

Mr. Fox stated regarding Administration and Procedures – the ZBA has not objection to delete 6.2.2.a.4. The recommendation is to strike 6.2.2.a.4

Mr. Lane explained that there was a fear of the explanation of earth removal and the definitions were put in there this way at the suggestion of Town Counsel. Also, with regards to 3.3.2.2, it has been presented to him in the past and he believes the Planning Board had no interest in doing anything with Earth Removal. So, there was a concern when you looked at 3.3.2.2 that if you did not put that exception in there you could have someone that is in an earth removal operation essentially answering to two masters. The Planning Board has full control over commercial and site plan review and subdivisions. And that is why everything else is left intact on 3.3.2.2. The concern was there didn't want to be confusion over who controls earth removal and who controls removal from a development.

Chairman Philpot asked if there was anyone else wanting to make a comment or ask a question, no response.

### **9:35 p.m. Close Public Hearing**

Mr. Pineo moved that the Board vote to close this Public Hearing relative to Amendments to Protective Bylaws relating to Earth Removal. Mr. Shapiro seconded the motion. The motion passed unanimously.

### **9:45 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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