ZONING BOARD OF APPEALS MINUTES

DATE: May 10, 2016
TIME: 6:00 pm
LOCATION: Butterick Municipal Building, Room 205

6:00 pm – Sterling Zoning Board of Appeals was ***called to order*** by Chairman, William Bird. Roll call taken. ***Sitting as a Board***: Joseph Curtin, Richard Hautaniemi, Jerry Siver, Matthew Campobasso and William Bird. Jeffrey Donaldson and Patrick Fox were absent.

6:01 pm – Special Permit- Charles and Melissa Lowe, Mobile Vending Truck, 62 Chocksett Road: William Bird opens the discussion by reading said hearing notice and asked the parties to state full name and intentions. Attorney Bill O'Neil introduces himself and his representation for the Lowes. Attorney O'Neil states the Lowes have been operating the mobile vending truck for three years under no permit just permission from the Selectman. Attorney O'Neil is unsure of the by-law that brought the Lowe's to the Zoning Board of Appeals. Charles Lowe stated that he had approached the building inspector because he wanted to show her the new design of his mobile vending truck and that is when he was told he needed a Special Permit and had to go through the zoning board of appeals process.

Joseph Curtin said he did approach outside counsel regarding the by-law and was told it could fall under Section C14.
Jerry Siver was concerned with the excise of a motor vehicle that is a tax usually goes through the Select board and being a Mobile Vending Truck it should proceed through Select board as before.
Charles Lowe states every year he has received his victuals license through the Selectboard and that was all to his process.

6:15 pm Board Discussion: Board members feel comfortable with the Lowes Mobile Vending Truck.

6:17 pm: Attorney O'Neil states the Lowes have never received one complaint since they have been there for the past 3 years.

6:20pm: Chairman William Bird opened ***comments from the floor***
An Abutter who runs a business next to said property has issues with the fact that he is a tax payer, paying all kinds of fees and feels it's an unfair playing adventure when mobile trucks perform business on town property and not pay taxes. He also feels a site plan review should take place on these mobile vending trucks.
Joseph Curtin agrees with the fairness in taxes and emphasizes the purpose of capturing these mobile vending trucks through a Special Permit process is an attempt for the Town to control these trucks and that this truly needs to be discussed at the Selectmen Level.
Attorney O'Neil brings forth the fact that the Lowes actually owns the property of the mobile vending truck, thus pay taxes and are taxpayers also of the town.

6:23 pm: Chairman William Bird closes the public hearing

6:24 pm: Board discusses the Stipulations they will invoke if granting a mobile vending special permit on this particular property. They are as follows:

1. Special Permit will need to be renewed every two (2) years and recorded with the Worcester District Registry of Deeds

2. Mobile Vending Truck will not be grandfathered in, it will be subject to any by-laws or ordinances the Town of Sterling produces at any such time.
3. Hours of Operation to be Monday-Sunday 11 A.M. to 11 P.M.
4. Comply with all Sterling Zoning By-Laws
5. That all Federal, State and Local laws will be upheld and all necessary permits be obtained

6:24 pm: Joseph Curtin moved to grant the Special Permit with above stipulations. Jerry Siver seconded, Voted: 5-0. All in favor. Special Permit granted.

6:30pm- Special Permit- Deb Berube/Margaret Gargulinski, Mobile Vending Truck, 7 Chocksett Road: William Bird opens the discussion by reading the hearing notice and asked parties to state full name and intentions. Deb and Bob Berube state they would like to set up a mobile vending truck on 7 Chocksett road being an 8'x16' trailer with 2 axels and is registered. Joe Curtin asked to described the proposed location. Bob Berube approaches the Board and shows them the proposed location. Please see attached document Exhibit A. Bob Berube confirmed that the access driveway will be next to Ground Control Driveway. The hours of operation will be Monday through Saturday 7 A.M. to 2 P.M. and it will be left on site.

6:35pm: Chairman William Bird opened ***comments from the floor***
An abutter to said proposed location expressed concern. Please see attached Exhibit B. Another abutter expressed concern of accidents and feels it's a hazardous location full of heavy traffic.
Joe Curtin asked how parking will be addressed. Petitioner states whatever it takes to meet the necessary safety concerns of all addressed.

6:47 pm: Chairman William Bird closed the public hearing

6:48 pm: Board discusses the Stipulations they will invoke if granting a mobile vending special permit on this particular property. They are as follows:

1. Special Permit will need to be renewed every two (2) years and recorded with the Worcester District Registry of deeds.
2. Mobile Vending Truck will not be grandfathered in, it will be subject to any future by-laws or ordinances the Town of Sterling produces for mobile food trucks.
3. Subject to State Highway Curb Cut
4. No parking along Chocksett Road
5. Location approval by Chief of Police
6. Approval by Conservation Commission, if applicable
7. Hours of Operation to be Monday-Saturday 7:00 AM to 2:00 PM
8. Comply with all Sterling Zoning By-Laws
9. That all Federal, State and Local laws will be upheld and all necessary permits to be obtained

6:52pm: Joseph Curtin moved to grant the Special Permit with above stipulations. Jerry Siver seconded, Voted: 5-0. All in favor. Special Permit granted.

6:55 Special Permit-Deborah Sendrowski, Commercial Kennel License, 153 Kendall Hill:
William Bird opens the discussion by reading said hearing notice and asked the parties to state full name and intentions. Deborah Sendrowski introduces herself and states she moved to Kendall Hill in October and had five (5) dogs at the time and that she simply needs a kennel permit for her amount of dogs she has. Joseph Curtin asks the petitioner how many dogs she intends on having. She states 8 dogs all together on her 2 acre parcel. The dogs basically live in her house and when let outside are in a 4 foot chain linked fenced in area.

7:02 pm: Chairman William Bird opened ***comments from the floor***
A few abutters voiced concern of the amount of dogs and the noise level they will make. Also concerned if the petitioner will continue to take on more dogs once granted permit. The petitioner reassured the concerned citizens that her dogs basically are indoor dogs and when let out they are under her supervision. Petitioner also stated that while she lived in West Boylston she had several dogs and never once received a complaint from the Animal Control Officer. The Board also explained that they can put stipulations on the Special Permit in which the Petitioner would have to abide by.

7:23 pm: Chairman William Bird closed the public hearing.

7:24 pm: Board discusses that these kennel owners they have dealt with are pretty diligent . Board discusses the Stipulations they will invoke if granting a Commercial Kennel special permit on this particular property. They are as follows:

1. Special Permit issued will allow for eight (8) dogs owned by Deborah Sendrowski
2. Special Permit issued will be void once current owner Deborah Sendrowski sell property.
3. Eight (8) dogs will be owned by Deborah Sendrowski and will be properly licensed by Animal Control Officer.
4. Current fenced in area at said location is to remain as is and is not to expand.
5. Obtain a personal kennel license in accordance with the State regulations.
6. Comply with all Sterling Zoning By-Laws.
7. That all Federal, State and Local laws will be upheld and all necessary permits be obtained.

7:30 pm: Jerry Siver moved to grant the Special Permit with above stipulations. Joseph Curtin seconded, Voted: 5-0. All in favor. Special Permit granted.

7:36 pm- Special Permit Amended- Simpson, James B., 40 Redstone Hill/Off Redstone Hill:
William Bird began with asking if there were any administrative issues on said permit, "NO" was stated, Ownership issue of small parcel figured out, "NO" was stated, Any Planning Board Approval, "Yes" was stated. William Bird reads Planning Boards motion. Please see attached Exhibit C. William Bird asked parties to state name and intentions.

Todd Brodeur, Esq. introduces his representation to said applicant and gives a brief summary of the Cider Hill Estates project that began back in February. Attorney Brodeur states he and Jim Simpson have been meeting with the Planning Board over the course of several months and have made some changes to original plan to try and accommodate the abutters concerns. He states the waterline will loop connecting to main and Redstone to help water pressure. Area of storage units agreed to remove storage units, has a peer review engineer to clear up items of concern. Attorney Brodeur states all the facts of how this Amended Special Permit fits all the criteria of the by-laws.

Mr. Simpson and Attorney Brodeur addressed questions from the Board.

8:00 pm- Chairman William Bird opened ***comments from the floor*:**
Several abutters and citizens voiced concern. Please see attached letter from an abutter Exhibit D. Major concern of said abutter is the ability to cross Redstone Place is still unknown. Another abutter reads letter of concern. Please see attached Exhibit E. Another abutter reads letter of concern. Please see attached Exhibit F. Some other concerns from abutters were setbacks, amount of bedrooms, abandonment or discontinued piece of land connecting said project, a blind corner on property, safety concerns.

Chairman William Bird states the bottom line is to find out who owns small parcel and whether is abandoned or discontinued. Attorney Brodeur gave a brief history of abandonment of small parcel and

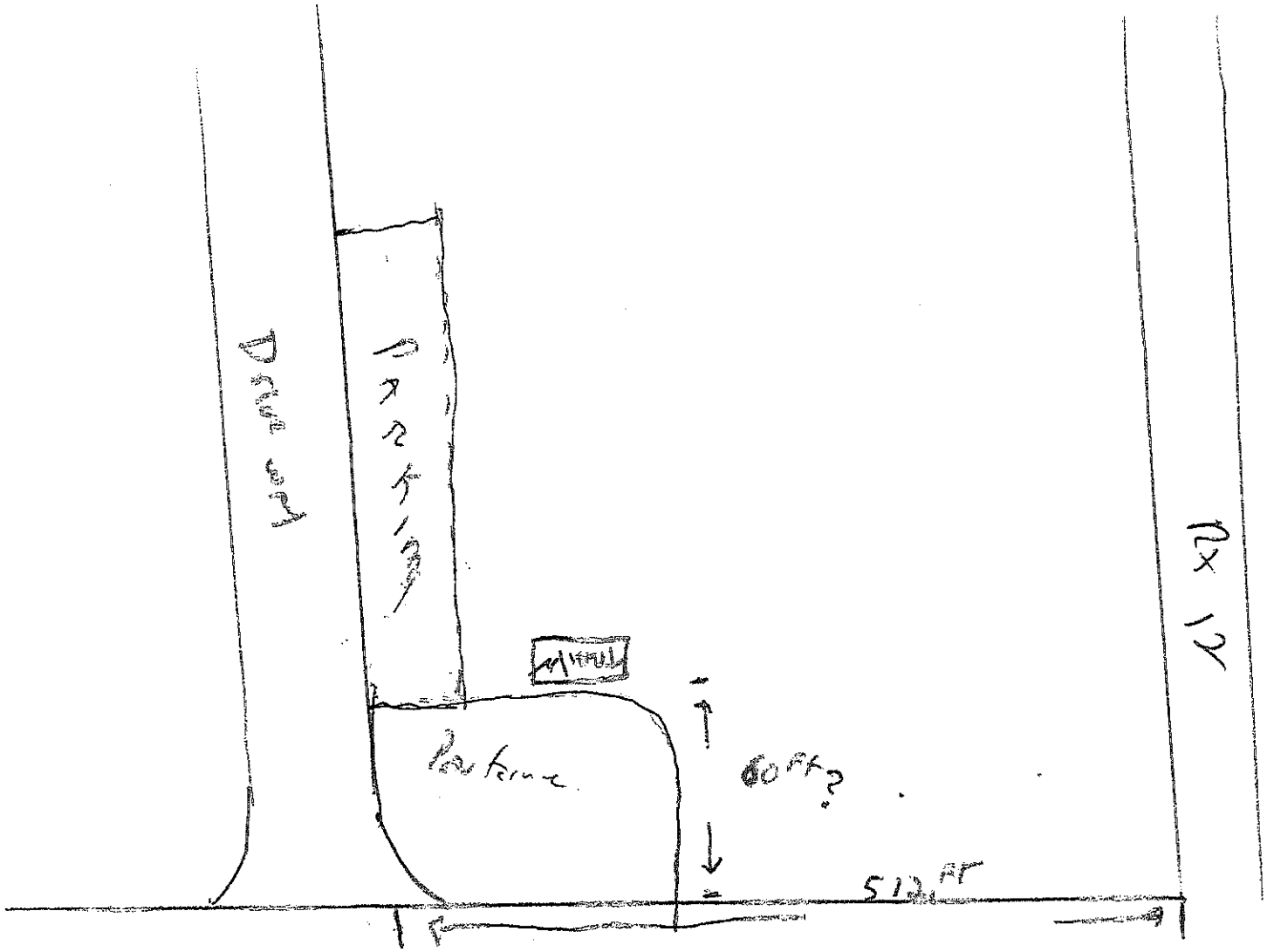
produced a certified vote from Lois Seifert dated February 15, 1958 at Annual Town Meeting, Article 43, Vote 43: Voted to abandon from Duncan Rice to Redstone Place.
An Abutter states in 1994 the same property was denied from Don Patten, denied passage and was considered discontinued and not abandoned. Another abutter stated in the July 31, 2013 Minutes, it states that the Town did not have power to abandon road, meant to discontinue it.

9:02 pm: Chairman William Bird states before this goes any further, we will need to determine who owns this piece of abandoned or discontinued land and will seek legal Counsel if necessary and advises petitioner to continue hearing. Joseph Curtin reiterates that there has to be a definitive answer on the definition of abandonment and discontinue and who owns the land.

9:04pm- request to continue the hearing was made by the applicant, the public hearing portion of the meeting remains open and will be continued at the next meeting. Motion to grant a continuance to the next meeting on June 14, 2016 was made by Joseph Curtin. Seconded by Jerry Siver. Vote: 5-0 in favor. MOTION TO GRANT CONTINUANCE OF HEARING UNTIL JUNE 14, 2016 AT APPLICANTS REQUEST.

9:08 pm – Review of Minutes from April 12, 2016: There being no discussion regarding the proposed Minutes of April 12, 2016. Jerry Siver ***moved to accept the Minutes as presented. Richard Hauteniemi seconded. Vote 5-0 in favor, motion carried. .***

9:09 pm Matthew Campobasso made Motion to Adjourn, Jerry Siver seconded, No Discussion, Vote:5-0 All In Favor. Meeting Adjourned.



Chocksett Rd

* STATE HIGHWAY CURB CUT.
* NO PARKING ~~after~~ Along Chocksett Rd.
* LOCATED ON PROPERTY AT LOCATION APPROVED BY POLICE CHIEF
* PER LOW COM APPROVAL IF APPLICABLE.

EXHIBIT A

Connie Gates
2D Patriots Way
Sterling, MA 01564-2370

EXHIBIT B

May 5, 2016

Town of Sterling
BOARD OF APPEALS
Butterick Building
1 Park Street
Sterling, MA 01564

TO WHOM IT MAY CONCERN:

This letter is in objection to the proposed hot dog truck at 1-7 Chocksett Road. That is a very dangerous section of road and intersection as well. I notice a police cruiser on surveillance each day at this exact location.

I live at 2-D Patriots Way which also is very hazardous entering or exiting George Peeso Road because of the numerous cars, police cruisers, town trucks and delivery trucks. When coming from Route 12 and trying to enter George Peeso Road we must move as far left as possible for the cars behind to pass on our right. May many cars turning right for a hot dog will be last minute decisions. So what happens? Does that cause a backup of cars or another accident?

With Meola's across the street, a hot dog truck at the intersection of Routes 12 and 62 (Lorna Jean's), a hot dog truck at the mini golf course (Mulligan's), a hot dog truck down the road on Chocksett Road (Stix & Pux), and the Sterling Ice Cream Bar ahead, I do not believe another hot dog truck is necessary in that spot.

Thank you!

Constance Gates
2-D Patriots Road
Sterling, MA 01564

MRS. CONSTANCE GATES
2D PATRIOTS WAY
STERLING, MA 01564-2370

5-10-16

Town of Sterling
Board of Appeals

Re: Addition to Letter
of May 5, 2016
Attached

On Thursday 5/5 I had entered Chockett Road from Rte 12 (a very dangerous intersection any which way with a known fatality and numerous accidents. I was preparing to turn left on George Reese Road (where I live) and had my left turn blinkers on and had stopped for two very large construction trucks approaching. Thinking they were going to pass so I could proceed but as they reached my car they both turned on their directionals and were to turn into #1-7 and #9 Chockett Road.
So, unfortunately I could not turn and they could not turn.

So, I was stuck in the middle of the road with trucks on my left and cars passing on my right. So I decided I must either try to turn behind second truck (who had completely blocked my view) or try to proceed straight and turn around. So, I decided to go around the back of Truck #2 if there were no cars coming out of Peeso Road.

So, although everything went well for me, I object being put in a situation like that again - especially for a "hot dog truck".

See Paragraph 3 in my original letter attached.

Thank You

Connie Gates

EXHIBIT C

Town of Sterling

1 Park Street, Sterling, MA 01564
Phone: 978-422-8111 Ext. 2320

TO:	Sarah Culgin, Building Inspector
FROM:	Sterling Planning Board
DATE:	May 5, 2016
RE:	Cider Hill Estates, Off Redstone Hill Road

Please be advised that the Sterling Planning Board voted on April 13, 2016, to approve, with conditions, the modified Site Plan for Cider Hill Estates, Off Redstone Hill Road, Sterling, MA.

Site:	Off Redstone Hill Road ~ Assessors Map 91, Parcel 30
Plan:	Multifamily Development, Cider Hill Estates, Off Redstone Hill Road, Sterling, MA 01564, dated January 25, 2016, revised February 8, 2016; March 29, 2016; and April 1, 2016
Owner:	Sterling Real Estate Development, Inc., 139 Greenland Road, Sterling, MA 01564
Prepared By:	Whitman & Bingham Associates, LLC, 510 Mechanic Street, Leominster, MA 01453 Job #12724, Plan #4-L-870, Civil Engineer Brian F. Milisci

THE APPROVAL IS CONTINGENT UPON THE FOLLOWING CONDITIONS:

1. The exception of any part of the project as shown on the final plans that violates the spirit of our order conditions of the prior multi-family housing project by the same applicant, on the same site that essentially takes it out of the order of conditions not touching Redstone Place.
2. Including but not necessarily limiting to the proposed emergency access from Shamrock Way to Redstone Place.
3. The 4.2 acre expansion parcel shall be legally merged with the base parcel prior to the issuance of a building permit within the expansion area.
4. The applicant shall prepare a water study providing the normal water service pressure through the site and the fire flow available in the site. Prior to construction approval and the placement of water utilities on the expansion parcel, the applicant shall request and receive the approval of the Sterling Department of Public Works and the Sterling Fire Department.
5. Within thirty (30) day after completion of the project an As-Built Plan will be submitted to the Planning Board in both paper (5 copies) and digital form (PDF). This is required by Section 6.4.10 of the Sterling Protective (Zoning) Bylaw.

6. Planning Board receiving recorded copy of the final Order of Conditions from the Conservation Commission.
7. Any conditions imposed by the Conservation Commission and the Board of Appeals will also be considered to be conditions of the Planning Board.
8. The project will be governed by a Private Association which will be responsible for the maintenance and repair of the interior streets, septic systems, infiltrators, etc.; none of this will be the responsibility of the Town of Sterling or its Taxpayers.

C: Town Administrator, Town Clerk, Conservation Commission, Fire Department, DPW, Zoning Board of Appeals, Board of Health, Sterling Council on Aging
Sterling Real Estate Development, 139 Greenland Road, Sterling, MA 01564
Whitman & Bingham, LLC, 510 Mechanic Street, Leominster, MA 01453

EXHIBIT D

April 10, 2016

RECEIVED
APR 11 2016
TOWN OF STERLING

Town of Sterling, Planning Board
Mr. Kenneth Williams, Chairman
1 Park Street
Sterling, MA 01564

Town of Sterling, Zoning Board of Appeals
Mr. William Bird, Chairman
1 Park Street
Sterling, MA 01564

Re: Simpson's Proposed New Development for Lot 30 of the Zoning Map of the Town of Sterling

Dear Sirs:

We, the users of the section of Redstone Place abutting lot 30 and residents of Sterling, are very concerned about the proposed development for Lot 30 of the Zoning Map of the Town of Sterling hereinafter referred to as "Lot 30." As residents of the Town of Sterling, we have had the privilege of using this as a public way for many years (some of us upwards of 20 years). We use it regularly as a quiet and safe place free from automobiles for activities such as walking (with children or dogs), biking, and horseback riding.

It is our understanding that Multifamily Developments must meet and adhere to **all** requirements under the Town of Sterling Protective By-laws. The proposed development for Lot 30 does not follow all aspects section 4.2 Multifamily Development of the by-law.

1) *4.2.2 Dimensional Requirements (a)* ***Lot Area.*** *Minimum lot area shall be not less than... five (5) acres.*

The size of **Lot 30** is 4.27 Acres. This protective by-law specifies that any **lot** must meet the minimum required acreage to even be considered for multi-family development. A **lot** is a measured parcel of land having fixed boundaries and designated on a plot or survey. As we see it, this proposal does not meet this requirement because this lot is a separate piece of land.

2) *4.2.3 Design Requirement. The purpose of these designs requirements are to ensure that multifamily dwellings and developments are* ***consistent in scale and site design with the single-family residential*** *character of the Town of Sterling;* ***to protect the environment;*** *to ensure traffic and pedestrian safety; and* ***minimize visual impacts.***

To illustrate the "single family residential character" of this neighborhood, more than 96% of perimeter of Lot 30 abuts single family residential properties and town conservation land with only about 4% abutting Mr. Simpson's multifamily development located on the opposite side of the "abandoned" Redstone Place Road. This is a rural wooded area in Sterling that has already been dramatically impacted visually by Mr. Simpson's construction on the current project with many trees and brush being totally removed. Also there has been a large amount of trash that has blown on to the public way of Redstone Place and Mr. Greg Fynan's property that we have cleaned up.

3) *4.2.3 Design Requirements (d) Open Space (1)* ***At least sixty percent (60%)*** *of the parcel shall be maintained as open space, and at least forty percent (40%) of the parcel shall be contiguous open space, excluding required yards and buffer areas.*

The proposed plan for this parcel on Lot 30 does not have a sufficient amount of open space. Instead, Mr. Simpson proposes that the "open space" requirement will be fulfilled on a separate parcel within the boundaries of his current project on Lot 53. It was our understanding when the Multifamily Developments were to be

allowed in Sterling that the open space would be within the confines of the parcel upon which the dwelling units are located in keeping with the character of Sterling.

4) *4.2.4 Decision. In deciding on a Special Permit for Multifamily Dwellings, the following more detailed criteria shall be used in addition to those in Section 1.6. Such Special Permit shall be granted only if the Board of Appeals determines that* ***the proposal would serve the town interests better than would single-family development of the same area,*** *considering the following:*

(d) Service to the current Sterling residents

(f) Impact on the natural environment.

(h) Impacts on the visual environment through preservation or displacement of visual assets, and consistency with existing development in the area.

We are the current residents. We know the natural environment. If this development is similar to the one currently being built it will have definite negative impacts on the natural and visual environment.

We respectfully ask both Boards to consider all of this information when deciding the request of Mr. Simpson to add Lot 30 to his development. We, the undersigned tax-paying Sterling Residents, sincerely hope you will decline his request. Furthermore, we invite the members of both Boards take a walk and experience for yourself this peaceful and unique stretch of land.

Sincerely,

Joyce Shepardson

James A Shepardson

Patricia Coakley

Margaret E Thomas

Richard A Thomas

Michael C Caisse

Victor Dellorgio

Nancy A Dellorgio 3 Matthew Ln

3 Matthew Ln

Wayne C Hause 7 Matthew Lane

Cynthia C Hause 7 Matthew Lane

Aimée Jacques, 7 Ashton Ln, Sterling, MA - Abutter

Edwin Jacques, 7 Ashton Ln, Sterling, MA - Abutter

Thomas Hagan 9 Matthew Lane Sterling

Mary Nourse

Jack Orth 42 Redstone Place

Valerie M. Orth 42 Redstone Place

Greg Dyman Redstone Place

1 Matthew Lane

Rebecca Rind 18 Redstone Place

[illegible]

Patricia C. Rind

Denis Bain

[illegible] 3 HAZELHURST WAY

[illegible] 1 Ashton Ln

Lisa Call 9 Ashton Ln.

Jack Ashley 11 Ashton Ln

Dawn Grimm

Susan T. Grimier

Mark W. Hanlon 22 Redstone Pl

Donna C. Hanlon 22 Redstone Pl

EXHIBIT E

Zoning Board of Appeals
William Bird - Chairman
1 Park Street
Sterling, MA 01564

Re: Sterling R.E. Dev Co Application for Amendment to Previously Approved Special Permit at Property Located at Redstone Hill Road, Sterling MA Assessors Map No.91, Lot No. 30/53

By now, you have likely heard multiple abutters share their concerns regarding the application for an amendment to the special permit. As abutters, we share these concerns as well; however, we believe the key issue in the decision to potentially grant the amendment to the special permit is the current legal status of Redstone Place. We contend that the status of Redstone Place must be determined prior to the Zoning Board of Appeals (ZBA) issuing any amendment to the special permit. The reason for this is clear. This proposed plan includes crossing a portion of Redstone Place on a section of this road where the current legal status is very much in question and has yet to be determined. Unfortunately, at their November 27, 2013 meeting, the Planning Board indicated it would not seek a ruling on the legal status of the road. We believe this was a grave error and that the status of the road should have been resolved almost three years ago.

If the entirety of Redstone Place is still a public way, the abutting land owners on either side of the road do not own to the center of the road and as such, the two parcels of land which constitute this project before the ZBA would not be contiguous. If that were the case, the 4+ acre land parcel for the new proposed expansion of the development, on its own, would not meet the minimum dimensional requirements of 5 (five) acres required for multifamily developments as per the Town of Sterling Protective By-Laws (Sec 4.2.2). In addition, the proposed private way (shown in the updated plans before the ZBA) which serves to connect the two parcels would need to cross a public way - Redstone Place.

While we do not know the current status of Redstone Place, as taxpayers and voters, we contend that the Town has a legal mandate and moral responsibility to the taxpayers and voters to consider the legal status of the road before making a decision. As such, we strongly urge the ZBA to obtain a legal ruling (not just an "opinion") prior to issuing any decision on the proposal before the board.

In order to illustrate the need to clarify this issue, we ask the board to consider the hypothetical example of a developer who secures a multi-acre parcel of land that abuts State Route 12 south of the center of the Town of Sterling. Let's further assume that the developer submitted plans for and received approval, sign offs and special permits by all necessary Town Boards and interested parties (including the Planning Board and the ZBA) for a multi-family development. Let's continue to assume that at some future point, after commencing with the approved project, the same developer secures a 4+ acre parcel of land directly across Route 12 on the opposite side of the road from the original parcel. He then comes before the ZBA seeking to "connect" the two parcels of land into a single development served by a private way that crosses State Route 12.

We believe that if this scenario were to exists, all Town Boards and interested parties would clearly, readily and quickly determine that the two parcels of land in our hypothetical example would not be contiguous and therefore, could not be considered together as being an expansion of the original approved plan for the multi-family development. Nor is it likely that Town Boards would allow the creation of a private way across the existing public way in order to connect the two land parcels. In the current proposal before the ZBA, the questionable legal status of Redstone Place is at the crux of the decision for as it is clear with our hypothetical Route 12 example, two parcels of land separated by a public way do not constitute contiguous properties.

In addition, we remind the Board of the concerns, conditions and promises associated with the original Special Permit and variances tied to this development. Back in 2004 and again in 2014, abutters voiced their concerns regarding the possibility that the developer could connect his development to Redstone Place as a means of egress from his development. Abutters feared that if the multi-family development was approved, residents would be able to drive either north or south on Redstone Place from the multi-family development to connect with Redstone Hill Road or Maple Street respectively. It is important to remind this Board that at their June 21, 2004 meeting during which the ZBA granted the original special permit and variance, it was stipulated that "Approval is subject to further condition that no roads, utilities or other passageways be connected to Redstone Place."

To further address these concerns, the developer affirmed at the February 26, 2014 Planning Board meeting that he would "continue to hold true to abutters and not tie any access to Redstone Place" and he further provided his word at the April 4, 2014 ZBA meeting that Redstone Place would "not be touched at all".

In summary, although we believe there are multiple reasons that the ZBA should deny the amendment to the Special Permit including previously set forth conditions, we strongly believe that failure to consider the current legal status of Redstone Place by the elected officials of both the Planning Board and the Zoning Board of Appeals constitutes an abdication of responsibilities that these boards have to the voters and taxpayers of this Town. In addition, failure to consider the legal status of Redstone Place would set a dangerous precedent for future building development decision making and may place the Town and members of the ZBA board at risk for future legal action. As such, we urge the ZBA to seek a definitive ruling on the current legal status of Redstone Place prior to considering approval of the amendment before the board.

Respectfully,

Scott R Handler / Marion E Larson
11 Matthew Lane
Sterling, MA 01564

EXHIBIT F

RECEIVED
MAY 09 2016
TOWN OF STERLING

Town of St
Zoning Board of Appeals
Mr. William Bird, Chairman
1 Park Street
Sterling, MA 01564

Donald O. Patten, Jr.
3 Hazelhurst Way
Sterling, MA 01564
May 5, 2016

Re: ZBA Consideration of Special Permit Application by Sterling Real Estate Development Co., Inc., James Simpson & Sholan Homes, Inc., Assessor's Map 91, Lot 53(43 Redstone Hill) & Assessor's Map 91 Lot 30 (Off Redstone Hill Road).

Dear Sirs:

I am unable to attend the ZBA meeting on Tuesday, May 10, 2016 for your consideration of the above referenced project, but as a citizen of Sterling and as a directly affected abutter to the proposed new multi-family development, I am very concerned about the project and with this letter would like to express my opinion on a number of issues that I feel should lead your Board to deny the Special Permit application. These include:

1. **Planning Board Approval** – The Planning Board voted to approve this project at their meeting on 4/13/16. At the time of this writing they have not yet produced a written statement reflecting that approval, but the language that was used in the motion to approve was essentially "the Board votes to approve this project, even though we should not approve it because of Mr. Simpson's prior commitments not to connect to Redstone Place, including the abandoned portion thereof". The Planning Board essentially stated that they approved because the site plan engineering details met their requirements, and they deferred to the higher authority of the ZBA for actual approval of the project. Again for this reason, they refused to address the fact that the status of Redstone Place is very much an open question that they have in the recent past, committed to resolve and then decided not to pursue. As background on this issue, I have attached my letter to the Planning Board of 4/11/2016, two copies of plans showing the proposed parcel for this new project, and a marked up copy of the "Town Clerk's Street Listing" referred to on Sholan Home's recent plan that was approved with ANR status by the Planning Board on 12/9/15. A cursory examination clearly shows that the Town Clerk's Street Listing is not to scale and shows the property of Warren Olson as extending much further down Redstone place than it really does. This was, however, the basis that was used to define the "Southwesterly Terminus of the Public Portion of Redstone Place" on both the Sholan Homes and Sterling Real Estate Development plans for this project. In the past 15 years the Planning Board has approved three plans with ANR status that consider Redstone Place to be still be a public way, at least to the inaccurately defined "southwesterly terminus of the public portion of Redstone place". Mr. Simpson's current project relies on this incorrect location, as he needs the portion of Redstone Place that he proposes to cross to have been abandoned in order for him to assert ownership. This location is shown on Whitman & Bingham's plan #4-L-870 sheet 1 of 9 as the westerly "Redstone Place - End of Public Portion". I believe that the Planning Board should have addressed this issue as part of their site plan review but, as they did not, I believe the responsibility falls on the ZBA to request that Mr. Simpson's engineers defend this inaccurate assertion.

2. **The project's failure to meet the Sterling's Protective Bylaws** - There has been significant opposition to the proposed expansion of this project from many of its abutters. As such, the Special Permit should in no way be approved unless it meets all requirements of the Protective Bylaws. The original project did not meet requirement 4.2.3(c)(3) "Any road of driveway serving 12 or more dwelling units shall have at least 250 visibility in each travel direction, and shall be separated from all other driveways or intersecting streets by at least 150 feet." This is clearly not the case where McIntosh Way intersects Redstone Hill Road less than 150 feet from the driveway of #32 Redstone Hill Road, where the headlights shining into the home of Arthur and Jayne Perkins are already a big problem for them, even while the units of the current project are only about

half occupied. Adding 12 more housing units to this project would only exacerbate this problem, further adding to the nonconformance of the project with the letter and spirit of the Protective Bylaw.

3. **Impact on Sterling schools** – Mr. Simpson has characterized this project as a net gain of 2 units to the previously approved Special Permit. I attended all of the ZBA meeting on that Special Permit, and I recall the discussion that was held on the impact that the project will have on Sterling's schools. The proposed project included 42 units, half of which were to be 1 bedroom and thus unlikely to house children that would add to the student population of Sterling's school system. At that time, the project included 21 one-bedroom condos, and 21 two-bedroom units. Thus, the project proposed to build 21 "extra" bedrooms that would be likely to house children. This fact was part of the ZBA's decision to approve due to the somewhat limited impact on the number of potential students added to the school system. Before starting construction, it seems that Mr. Simpson unilaterally made the decision to change the project to 32 two-bedroom units. While this change did represent a reduction in the number of units, the number of bedrooms increased from 63 to 64 so it still utilized all his septic system capacity. This change raised the number of "extra" bedrooms from 21 to 32. An approval of the proposed additional 12 two-bedroom units would raise the number of "extra" bedrooms from 32 to 44, more than twice the number that were previously approved, and clearly having a much larger potential impact on Sterling's schools.

4. **Failure to Satisfy the Protective Bylaw's Multifamily Development Design Requirements and "Decision" Criteria** – Like essentially all of my neighbors, I am very concerned that this project will reduce the value of my property and my quality of life, because with its dense packing of 12 units onto 4.27 acres, it is grossly at odds with the single-family residential character of the existing neighborhood. Section 4.2.3 of the Protective Bylaw is entitled "**Design Requirements**". It starts with the statement "The purposes of these design requirements are to ensure that multifamily dwellings and developments are consistent in scale and site design with the single-family residential character of the Town of Sterling; to protect the environment; to ensure traffic and pedestrian safety; and to minimize visual impacts".
Section 4.2.4 is entitled "**Decision**". It states "In deciding on a Special Permit for Multifamily Dwellings, the following more detailed criteria shall be used in addition to those in Section 1.6 (Note – Section 1.6 does not seem to exist). Such Special Permit shall be granted only if the Board of Appeals determines that the proposal would serve town interests better than would single-family developments of the same area, considering the following:
    a. Municipal costs and revenues
    b. Effect of the range of available housing choice
    c. Service to identified housing needs
    d. Service to current Sterling residents
    e. Support for local business activity
    f. Impact on the natural environment
    g. Impact on traffic safety and congestion, adequacy of water service, and the need for school facilities
    h. Impacts on the visual environment through preservation or displacement of visual assets, and consistency with existing development in the area.

   I have underlined several areas that have bearing on this decision by the Board, but in my mind the three that stand out the most are the requirements to consider service to current Sterling residents, the impact on schools, and for consistency with existing development in the area. Note that the Protective Bylaw calls out these as the criteria that shall be used. Any decision based on other criteria would clearly violate the letter and spirit of the bylaw.

5. **Lack of Hardship** - The previous Special Permit for the Cider Hill Estates development was based on a parcel that Mr. Simpson had purchased some years prior, and that he had held through a number cycles in the real estate market. The currently proposed project addresses an entirely new parcel that Mr. Simpson does not

Town of Sterling
Planning Board
Mr. Kenneth Williams, Chairman
1 Park Street
Sterling, MA 01564

Donald O. Patten, Jr.
3 Hazelhurst Way
Sterling, MA 01564
April 11, 2016

Re: Planning Board Preliminary Discussion regarding Site Plan Review Modification > Sterling Real Estate Development Co., Inc., James Simpson & Sholan Homes, Inc., Assessor's Map 91, Lot 53(43 Redstone Hill) & Assessor's Map 91 Lot 30 (Off Redstone Hill Road).

Dear Sirs:

As I presented at the March 30, 2016 Planning Board's preliminary discussion on the above referenced project, I am very concerned that on 12/9/15 the Board approved Sholan Homes, Inc. plan 5-G-178B for Parcels A-1, A-2, B-1, and B-2 on the southerly side of Redstone Place. Specifically, I object to the fact that this plan asserts ownership by Sholan Homes, Inc. to the center of Redstone Place, and calls out a public and private portion of Redstone Place, identifying a *"southwesterly terminus of the public portion of Redstone Place"*.

I find it impossible to understand how the Board could approve the plan containing these details when this exact topic was the subject of strenuous disagreement at the Board's meetings in the spring/summer of 2013 on the proposed development of Redstone Place by Sholan Homes, Inc. At the conclusion of those meetings, the Board promised to resolve the "unknown" status of Redstone Place. Subsequent to that I was told by the Board Chair that a decision had been made not to spend the money to resolve this question, clearly leaving the status as "unknown".

Further, at those meetings in 2013 the location identified as the *"southwesterly terminus of the public portion of Redstone Place"* was completely discredited when it was acknowledged by the engineer for Sholan Homes as having come from a not-to-scale sketch of the properties on Redstone Place. This information was summarized clearly in a letter from myself to the Board dated 8/14/13.

I would point out that the Planning Board has twice in the past ~15 years provided "ANR" approval to plans that were based on the premise that the previously unpaved portion of Redstone Place are still a public way. The first time was when the current home of Steven and Valerie Ortiz was built at #42 Redstone Place. The second time was when the Board provided ANR approval on 3/27/13 to Sholan Homes, Inc. on plan #P-5-G-178 for four single family building lots.

The approval of the most recent Sholan Homes, Inc. plan, and the pending sale to Sterling Real Estate Development that depends on it, certainly gives the appearance that the Board has been willing to make inconsistent decisions on the status of a public way based solely on the convenience of a developer.

It is particularly concerning to me, as a citizen of Sterling and as an affected abutter to the proposed new multi-family development located on a separate parcel on the other side of Redstone Place from the existing development, that comments made by the Board at the March 30, 2016 meeting seem to indicate that the Board will stand by its approval of the Sholan Homes, Inc. plan 5-G-178B, even while acknowledging both the 2013 open question on the status of Redstone Place, and that Mr. Griffin of Sholan Homes, Inc. told the Board that plan 5-G-178B was not for building lots.

I would point out to the Board that in order for Sterling Real Estate Development to move forward with its proposed multi-family project expansion on the south side of Redstone Place, they will need to file a plan that makes a similar assertion about owning to the center of Redstone Place where the two parcels would thereby