

STERLING PLANNING BOARD MINUTES ~ May 29, 2019

~~~~~  
**Present:** Russ Philpot ~ Chairman  
John Santoro ~ Vice Chairman  
David Shapiro ~ Clerk  
Patty Page ~ ANR Agent  
Craig Miller ~ Member  
Betty Kazan ~ Administrative Assistant  
Domenica Tatasciore, Town Planner

### **Call to Order**

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

### **Welcome New Member**

Philpot welcomed and congratulated Patty Page to the Board.

### **Planning Board Reorganization**

#### **Chairman**

Shapiro moved that the Board appoint Russ Philpot as Chairman. Santoro seconded the motion. The motion passed unanimously.

#### **Vice Chairman**

Philpot moved that the Board appoint John Santoro as Vice Chairman. Miller seconded the motion. The motion passed unanimously.

#### **Clerk**

Miller moved that the Board appoint David Shapiro as Clerk. Page seconded the motion. The motion passed unanimously.

#### **ANR Agent**

Santoro moved that the Board appoint Patty Page as ANR Agent. Miller seconded the motion. The motion passed unanimously.

#### **MRPC ~ Member Representative**

Shapiro moved that the Board appoint Patty Page as the Board's representative to the Montachusett Regional Planning Commission. Miller seconded the motion. The motion passed unanimously.

#### **MJTC - Alternate ~ P.B. Representative**

The Board agreed to table this appointment pending a viable candidate.

#### **Master Plan Committee ~ P.B. Representative**

The Board agreed this appointment was not applicable at this time.

#### **Affordable Housing Plan Committee ~ P.B. Representative**

Philpot moved that the Board appoint David Shapiro as the Board's representative to the Affordable Housing Plan Committee. Santoro seconded the motion. The motion passed unanimously.

#### **Earth Removal Board P.B. Representative**

Philpot moved that the Board appoint Craig Miller as the Board's representative to the Earth Removal Board. Shapiro seconded the motion. The motion passed unanimously.

### **Minutes**

Miller moved that the Board approve the minutes of May 8, 2019 as amended. Santoro seconded the motion. The motion passed with four in favor and one abstain (Page was not on the Board).

## STERLING PLANNING BOARD MINUTES ~ May 29, 2019

### Warrants & Payroll

Board Members reviewed a payroll warrant and warrants for WB Mason and Telegram & Gazette.

### Discuss and take any action necessary relative to Gibson Dairy dba Cream Crock Distributors, 48-50 Worcester Road

Mr. Fran Gibson of Gibson Dairy along with Michael Burke, Burke Engineering were on hand to present the site plan for 48-50 Worcester Road, Sterling, MA. Gibson gave a brief synopsis of the activity. Gibson confirmed that he did not anticipate any additional changes to the plans presented.

Philpot stated that the next steps in the process would be a reviewed by the Town's Engineer as well as various departments.

### Discuss Earth Removal Bylaws

Mr. Jeff Donaldson spoke about his suggestions for the Earth Removal Bylaws.

After a discussion, Board Members agreed that it would be a good idea to go back and put the former ERB Working Group together and to consider a role for Mr. Donaldson if he should want it. (Shapiro, Miller, Pat Fox and Mike Rivers).

Philpot agreed to reach out to the ZBA and ERB.

### Board Policy: Planning Board representation

Philpot expressed concerns over Board Members not indicating that they are expressing their opinions as a private citizen and not that of the Planning Board in outside discussions.

Mr. Donaldson suggested whenever appropriate to give a full disclosure that 'the opinions expressed are my own and not representation of the Board'.

Philpot felt it would be healthy for the Board to establish a policy in writing which gives the Board and the individual something to stand on and be backed up. Philpot will reach out to other Boards to see what their words are.

### Town Planner's Report/Discussions

Philpot stated the Board has not received a report from the Town Planner.

Town Planner reported that the Town Clerk has submitted all her amended Bylaw reports to the Attorney General's office. EDC working with the microbrewery business startup She will be absent at the next meeting scheduled for June 12, 2019. Tatasciore last comment referred to her memo dated May 23, 2019 regarding the Master Plan Charge.

Philpot acknowledged that all members received this memo from the Town Planner relating to the Board of Selectmen appointing the MPC and the BOS approving the MPC charge. Philpot suggested this discussion be taken up at the June 26<sup>th</sup> meeting.

## STERLING PLANNING BOARD MINUTES ~ May 29, 2019

~~~~~  
Tatasciore informed the Board that moving forward she would be reading her report at the Planning Board meeting. Philpot asked if it would be possible to get a written copy and Tatasciore responded “not before the meeting” but will provide a hard copy to the Board after.

Sterling ZBA Notices

Philpot acknowledged a notice of a June 11, 2019 ZBA hearing for a special permit for NEADS, Inc., property located at 104-106 Leominster Road.

Philpot acknowledged a notice of a June 11, 2019 ZBA hearing for Serrato Signs seeking a variance.

ZBA Notices from surrounding Towns

Philpot acknowledged notices of hearings from various surrounding Towns.

Chairman’s Report/Notices/Discussions

MRPC

Philpot acknowledged email from MRPC for Draft FY2020 Unified Planning Work Program.

Request to be read into the meeting minutes

Philpot read an email dated May 20, 2019 from Rosanne Mapp. (See Attachment A)

Philpot asked the Board if they had any comments.

Philpot clarified the comment in the letter indicating ‘that the Planning Board Public Session seems to have been eliminated’. Philpot stated that the Planning Board has never had a Public Session on their agenda.

Personal issues with certain Board and Committees ~ Philpot stated he does not have any personal issues with people. He has professional issues. As a member of this Board Philpot has a professional issue with the Board of Selectmen with the appointment they are about to make that is on their agenda for tonight which abrogates our authority with respect to Master Plan Committees. It erodes the authority of this Board and violates Mass General Law.

Page asked why can’t we have a public session. Philpot response was the OML does not require any board or public body to allow public input it is at the discretion of the Chair.

Ms. Mapp stated her letter had nothing to do about what this Board has to do on a regular basis. The topic was the Master Plan.

Administrative Assistant’s Report/Notices

Kazan informed the Board that the Planning office would be closed on Monday, June 17 and Tuesday, June 18.

Upcoming applications

Kazan informed the Board that she anticipated an ANR for 181 Clinton Road and Site Plan for NEADS, Leominster Road at a future meeting.

STERLING PLANNING BOARD MINUTES ~ May 29, 2019

June 12 Meeting

Philpot may not be at the June 12th meeting. The Board will wait until next Tuesday which is the deadline to get on the agenda before deciding whether to hold this meeting.

Discuss e-mail communication and potential OML Violation

Philpot expressed concerns over an e-mail communication that Ross Perry sent to him and copied the entire Board.

Philpot read a series of emails sent by himself, Patty Page and Ross Perry. (See Attachment B)

Page stated that she spoke with someone from the Attorney General's office and they told her this was not an OML violation.

Philpot read an email he sent to the AG's office Open Meeting Law Division and their response. (See Attachment C):

Philpot stated that it seems to him according to this person at the AG's office that Page expressed an opinion and violated the Open Meeting Law.

Page stated she disagreed with this and did not think she violated anything. She stated go ahead and file a complaint.

Philpot stated we would leave it there and see what happens. Shapiro recommended that the Board not pursue this.

After a discussion, Board Members were all in agreement for Philpot to meet with Perry 1 on 1.

Update on Master Plan ~ David Shapiro

Shapiro mentioned everyone received the memo from the Town Planner and they are pushing ahead with the formation and Charge of the Master Plan Committee.

Santoro stated at the last meeting the Board agreed to establish a five to seven member Master Plan Committee. Shapiro stated the MP Team did not like this idea.

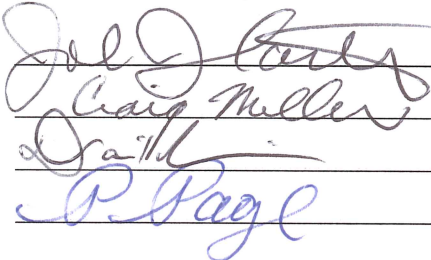
Progress Report on Planning Board Goals

The Board agreed to have updates on an upcoming meeting for their individual goals.

8:26 P.M. MOTION TO ADJOURN

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

APPROVED BY:



Attachment A

Dear Editor,
Planning Board,
Board of Selectmen,
Town Administrator,
Town Planner:

With the current Chairperson of the Planning Board, Public Session seems to have been eliminated. If these people are ELECTED by the Voters of Sterling; why then no Public Session. They represent "We the People". Silencing the voters of our Town seems to me to be in direct opposition to what they were elected to do—listen and answer questions. If not at an Public Session, when, where and how.

This Board seems to have personal issues with certain Boards and Committees in OUR Town that have gone beyond reason. Shouldn't all Boards and Committees be working for the people...not personal agendas? Wouldn't it be better to communicate with other Boards and Committees to ascertain information that would make the Town run in a better manner that would move things along in an amicable way rather than hostility? Obstructionism does not belong in our Town.

I am writing this to the Editor of the Meetinghouse News because we have no voice with this particular Board... I anticipate now that the Election is over and there is a new Board Member that the configuration of this Board will change the Chairman... I look forward to this happening expediently.

Sincerely, Rosanne Mapp

From: Patty Page
Sent: Thursday, May 23, 2019 10:43 AM
To: r.philpot@comcast.net
Cc: Ross Perry; Betty Kazan; sterlingbuildco@aol.com; davidjshapiro@gmail.com; jsantoro@gervaisford.com
Subject: RE: Town Planner role, responsibility, and tasks

I look forward to discussing this further with the other members.

Betty probably already handled this, but please use my planning board email for future planning board correspondence. Thanks!

pattypagepb@gmail.com

From: Russ Philpot <r.philpot@comcast.net>
Sent: Thursday, May 23, 2019 10:10 AM
To: Patty Page <ppage@sterling-ma.gov>
Cc: Ross Perry <rperry@sterling-ma.gov>; Betty Kazan <bkazan@sterling-ma.gov>; sterlingbuildco@aol.com; davidjshapiro@gmail.com; jsantoro@gervaisford.com
Subject: Re: Town Planner role, responsibility, and tasks

I stand on my previous message.

Sent from my iPhone

On May 23, 2019, at 8:54 AM, Patty Page <ppage@sterling-ma.gov> wrote:

I disagree. This is purely administrative in nature. There will be no deliberation and the "matter" is not within planning board jurisdiction.

From: Russell Philpot <r.philpot@comcast.net>
Sent: Thursday, May 23, 2019 5:59 AM
To: Patty Page <ppage@sterling-ma.gov>; Ross Perry <rperry@sterling-ma.gov>; Betty Kazan <bkazan@sterling-ma.gov>; sterlingbuildco@aol.com; davidjshapiro@gmail.com; jsantoro@gervaisford.com
Subject: RE: Town Planner role, responsibility, and tasks

PLANNING BOARD MEMBERS: Do not respond/reply to this latest message as doing so will violate the OML.

From: Patty Page [<mailto:ppage@sterling-ma.gov>]

Sent: Wednesday, May 22, 2019 4:25 PM

To: Ross Perry; r.philpot@comcast.net; Betty Kazan; sterlingbuildco@aol.com; davidjshapiro@gmail.com; jsantoro@gervaisford.com

Subject: RE: Town Planner role, responsibility, and tasks

I am available to meet on either of those dates if there is actually a need to discuss this topic further.

However, I have to say, I am comfortable in my understanding of the roles & responsibilities of our Town Planner. Domenica is a professional who assists anyone with any type of Land Use questions or concerns.

I am not in favor of having this discussion at a public meeting.

Patty.

From: Ross Perry <rperry@sterling-ma.gov>

Sent: Wednesday, May 22, 2019 7:48 AM

To: Russell Philpot <r.philpot@comcast.net>; Betty Kazan <bkazan@sterling-ma.gov>; 'Craig Miller' <sterlingbuildco@aol.com>; 'David Shapiro' <davidjshapiro@gmail.com>; 'John Santoro' <jsantoro@gervaisford.com>; Patty Page <ppage@sterling-ma.gov>

Subject: RE: Town Planner role, responsibility, and tasks

Russ:

There is a Selectmen's meeting on the 29th. This conversation is best held 1 on 1. I'm sure you have an opinion on this topic and can speak for the Planning Board or at least report to them the outcome of our discussion.

The Tuesday and Wednesday dates offered below are still available.

Ross

From: Russell Philpot <r.philpot@comcast.net>

Sent: Wednesday, May 22, 2019 6:20 AM

To: Ross Perry <rperry@sterling-ma.gov>; Betty Kazan <bkazan@sterling-ma.gov>; 'Craig Miller' <sterlingbuildco@aol.com>; 'David Shapiro' <davidjshapiro@gmail.com>; 'John Santoro' <jsantoro@gervaisford.com>; Michael Pineo <mpineopfp@aol.com>

Subject: RE: Town Planner role, responsibility, and tasks

Mr. Perry,

I believe our Board does have questions regarding the RR&T of the Planner. Unfortunately I have not been authorized by the Board to speak on its behalf so meeting with you would not be possible at this time. Perhaps you would consider meeting with us at our next meeting on Wednesday, May 29th at which time you & the entire Board could engage in meaningful conversation.

Our agenda for that meeting will be posted soon (if not already) but I will gladly include you on it if you let me know by this Friday – next Monday is a Holiday.

Sincerely,

Russell Philpot

From: Ross Perry [<mailto:rperry@sterling-ma.gov>]
Sent: Tuesday, May 21, 2019 10:35 AM
To: r.philpot@comcast.net; Betty Kazan; Craig Miller; David Shapiro (davidjshapiro@gmail.com); John Santoro (jsantoro@gervaisford.com); Michael Pineo
Subject: Town Planner role, responsibility, and tasks

Russ:

Apparently, there are questions about the role, responsibility, and tasks assigned to the Town Planner.

If you would like to discuss these topics in my office, 4:00 Tuesday May 28th or the same time on Wednesday May 29th are available.

If these dates and times aren't available for you please send another date and time.

Sincerely,

<image001.jpg>

Ross Perry

Town Administrator

Town of Sterling

One Park Street

Sterling, MA 01564

978-422-8111 x2315

978-621-6662 Mobile

Betty Kazan

From: Russell Philpot <r.philpot@comcast.net>
Sent: Friday, May 24, 2019 11:39 AM
To: Betty Kazan
Subject: FW: Interpretation needed.

From: OpenMeeting (AGO) [mailto:openmeeting@state.ma.us]
Sent: Friday, May 24, 2019 11:00 AM
To: r.philpot@comcast.net
Subject: RE: Interpretation needed.

Good morning Mr. Philpot,

We generally caution public body members to be careful when communicating via email, as emails between public body members often constitute "deliberation" outside of an open meeting.

The Open Meeting Law defines deliberation as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction." Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These are the types of communications that are considered to be "administrative" in nature and generally will not constitute deliberation.

We have said that discussion of a public body's operation is public business within the public body's jurisdiction. Opinions about personnel would likely be considered "board business" and as such, these opinions should be shared only in an open meeting. Unfortunately, what starts as a purely administrative discussion (scheduling a meeting) may quickly turn into a discussion about board business.

Sincerely,

Mira Netsky

Paralegal, Division of Open Government

Massachusetts Office of the Attorney General

One Ashburton Place, 20th Floor

Boston, MA 02108

Ph: (617) 963-2540

Mira.Netsky@mass.gov

From: Russell Philpot <r.philpot@comcast.net>
Sent: Friday, May 24, 2019 9:14 AM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Subject: Interpretation needed.

Good Morning Madame/Sir,

As the chairman of the Planning Board in Sterling our Town Administrator has invited me (e-mail) to meet/discuss the role of our Town Planner vis-a-vi the Planning Board. I responded that I am not authorized to speak on behalf of the Board on this matter, that we all had some questions and invited him to attend our regular public meeting. His reply was to re-state his invitation saying a "1 on 1" meeting would be better. At this point, a member of our Board interjected (e-mail) stating her availability to meet and then offering her opinion on the general performance of the Planner as well as her opinion that such a meeting/discussion should not be held in public. Upon reading this e-mail I directed (e-mail) the entire Board to "not respond/reply" as it would violate the OML – e.g. constitute a deliberation.

In a follow-up response to my direction to the Board, this member then stated this - e-mail discussion- is "purely administrative in nature. There will be no deliberation and the "matter" is not within planning board jurisdiction."

Am I correct in my interpretation of the OML as it applies to this situation?

Below is the entire e-mail chain for your edification.

Thank you, in advance, for your support,

Russell R. Philpot

Sterling Planning Board, Chairman

Ps: If it's more convenient for you, feel free to call me @ (978) 660-9520