

STERLING PLANNING BOARD MINUTES – December 27, 2017

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



Mr. Santoro called the meeting to order at 7:01 P.M. in Room 202 of the Butterick Building.

### Minutes

Mr. Philpot moved that the Board hold on approving the minutes for December 13, 2017 until the next meeting. Mr. Pineo seconded the motion. The motion passed unanimously.

### Warrants

Board members reviewed a payroll warrant. Board members approved a warrant for Haley & Ward (Rock Breakers).

### ANR~ 7 Chocksett Road

David LeRoy, Hannigan Engineering, Inc., on behalf of his client Margaret V. Gargulinski Irrevocable Trust, Ann Desmarais, Trustee and applicant NGII Realty, LLC, Matthew Bovenzi, Manager explained that the purpose of this ANR plan is to create a parcel, shown as Parcel Y, which will be conveyed from Margaret V. Gargulinski Irrevocable Trust to NG II Realty, LLC leaving the remaining property being depicted as Parcel D-1.

Mr. Philpot stated that the ANR requires topographical lines in two foot increments are shown on the plan but Mr. Philpot thinks it is fair and reasonable that the Board waive that requirement for this particular ANR request only finding that the lot is labelled as a non-buildable lot. So bearing in mind that this is not a buildable lot, there is no buildable site which means we do not need to confirm access to a buildable site. Mr. Philpot thought it would be fair and reasonable to waive the requirement for topographical lines.

Mr. Philpot cited a letter signed by Larry Sabeau from Hannigan Engineering in the second paragraph he writes 'There is not a frontage issue due to the fact the property is a parcel with access through an existing right of way off of Chocksett Road and falls within the Light Industrial Zoning District.' This is a moot point but just for clarification, Mr. Philpot agrees there is no frontage issue because there is no frontage for this lot and the right of way under the ANR rules states there are three types of ways and this does not meet any of the three.

Mr. Philpot moved that the Board approve the ANR for Assessors Map 71 Lot 23 located at 7 Chocksett Road.

Mr. Miller had one question. He asked why they have encroached so close to that existing cell tower. Zoning requires a 35 foot side set-back and it appears they go within 10 feet of the existing cell tower which doesn't seem to make any sense. Mr. Leroy stated that there is a fence around the cell tower. Mr. Miller stated it does not show the fence around the cell tower.

Mr. Pineo also questioned Map 71 Lot 22 as the property owner was not correct.

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Based on this information, Mr. Philpot withdrew his motion.

Mr. Santoro also added that Chocksett Road was also misspelled.

Mr. Philpot stated just to be clear, we are going to get the correct owner of that middle parcel (Lot 22), correct the spelling of Chocksett Road and within the fence boundary you are going to show us any structures.

Mr. Philpot moved that the Board not endorse this ANR. Mr. Pineo seconded the motion.

Mr. Philpot moved that the Board withdraw endorsement of the ANR for Map 71, Lot 22, 7 Chocksett Road. Mr. Pineo seconded the motion. The motion passed unanimously.

Mr. Miller asked what the minimum setbacks were for the existing cell tower.

Mr. LeRoy asked if the Board would consider extending this ANR application until he has had a chance to correct the errors. The Board agreed to include this ANR on their next agenda for January 10, 2018 provided Mr. LeRoy has submitted all required (updated) documents to the Planning Board Office prior to their January 10th meeting. Mr. Santoro confirmed that this would not have to meet the twenty-one day requirement as the applicant has requested an extension.

Mr. Leroy confirmed he would also send the Board an updated version (pdf) of the ANR plans.

Discuss and take any action regarding Earth Removal Board representative and conflict of interest MGL 268A §19 Disclosure by None-elected Municipal Employee of Financial Interest and Determination by Appointing Authority

Mr. Philpot stated this was a formality. You gentlemen may or may not know that the Earth Removal Board has been served by a complainant and in addition to that Mr. Philpot has been named in a separate law suit. The reality is that Mr. Philpot has a conflict of interest that could render him impartial. This is a disclosure by non-elected municipal employee of financial interest and determination by appointing authority. This Board appointed him to represent the Planning Board on the Earth Removal Board and the Planning Board is his boss in that context. It is up to this Board to determine as to whether or not they feel that given the situation of Mr. Philpot being named separately in a law suit and also as a member of the Board, that you could find that he could be conflicted to the point that he could no longer take part in any discussions as a member of the Earth Removal Board prior to that particular lawsuit because his other lawsuit might render him impartial. Or you could find that I would still act in the best interest of the Town even though I have a separate lawsuit. And so, that is the decision for this Board.

Mr. Philpot then read the following from Form 268A §19: ‘My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here, that being a separate lawsuit. I request a determination from my appointing authority about how I should proceed.

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Please describe the particular matter.

I have been named individually as a defendant in a lawsuit entitled LCM Realty Trust and TCF Holdings, LLC v. Earth Removal Board, which is an appeal of the issuance of a cease and desist order but also includes a claim against me for defamation.

Please describe the task you are required to perform with respect to the particular matter.

Three members of the Earth Removal Board have been named individually in the lawsuit, so all three have a conflict. If all three members are disqualified from participating in matters concerning this litigation, there can be no quorum of the Earth Removal Board to convene a meeting, discuss a possible settlement or take any vote or other action that may be associated with a settlement. Accordingly, the task needed to be performed is to be able to participate as a member of the Earth Removal Board on all discussions pertaining to this litigation including the potential resolution of same.

Financial interest in the particular matter.

Mr. Philpot indicated that he has checked the box that he has a financial interest in this matter.

Explain the financial interest

I have been named individually. The amount of the financial interest is unknown at this time.'

So, it is up to this Board to consider these facts and then there is page two of this form where the Appointing authority signature (Chairman) and the date and any comment if you would like to add.

Mr. Philpot stated that the Board could vote to either say that you would find his conflict not so severe that he would not be able to act in the best interest of the Town on the Earth Removal Board or you could say that his conflict is severe enough that in your opinion he would not be able to act in the best interest of the Town on the Earth Removal Board. The Board could also appoint an alternate to replace him (Philpot) on the ERB.

Mr. Philpot then recused himself from this consideration and left the meeting.

Mr. Santoro stated he does not find Mr. Philpot as being a risk for this Board.

Mr. Pineo stated that he sits on the Earth Removal Board with Mr. Philpot and feels confident in his actions and he does not feel you would be a risk to the Town.

Mr. Miller stated he would not have any concerns and he felt Mr. Philpot would not be a risk to the Town.

Mr. Pineo moved that the Board vote that Mr. Philpot proceed and continue with his responsibilities on the Earth Removal Board. Mr. Miller seconded the motion. The motion passed unanimously.

Mr. Santoro then signed the Determination by Appointing Official's form 268A §19.

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### Administrative Assistant's Report/Notices

#### Review Fees & Time Lapse on projects

Following on to the Board's desire to close-out any/all Approved Site Plans, Ms. Kazan informed the Board that she has sent letters to all applicable projects with Approved Site Plans that their Review Fee account is deficient and/or their project may be at risk of Lapse and requested a response within 60 days to address any outstanding issue. As a result of these letters we have received an As-Built on Rafferty Aluminum and we will be contacting Haley & Ward to conduct a final site review and hopefully we will be able to get them in to the next meeting and wrap this project up. We also received review fees on the Chad Lane Subdivision.

#### Annual Town Report

Ms. Kazan informed the Board that the Annual Town Report is not due in until March 14, 2018.

#### 146 Pratts Junction Road

Ms. Kazan received a phone call from property owner Mr. Wentzel regarding our letter requesting an As-Built be submitted. He stated that this project was discontinued and wanted to know why he would need to do an As-Built and asked that someone contact him.

Mr. Santoro stated that he feels Mr. Wentzel should come before the board and explain why he wants to close out the project as the Board needs to know just what, if anything has been done.

The Board asked Ms. Kazan to contact Mr. Wentzel and have him submit a letter explaining why he would like his project closed out. If anything has been installed on the property it would require an As-Built Plan.

#### 7:30 P.M. Joint meeting with the Zoning Board, Earth Removal Board, Building Commissioner/Zoning Enforcement Officer and Town Administrator to develop a community position over roles and relationships of the Planning, Zoning and Earth Removal Boards

Present:

Russell Philpot, Michael Pineo and Mike Rivers ~ Earth Removal Board Members

Patrick Fox (Acting Chairman), Matthew Campobasso, Joe Curtin, Diana Baldarelli and Jerry Siver ~ ZBA

Ross Perry, Town Administrator, Sarah Culgin, Building Commissioner

The Earth Removal Board and Zoning Board opened their meetings.

Mr. Fox explained that the Zoning Board at the request of Bill Bird asked to meet to clarify the roles of each respective Board. The Zoning Board feels that there are provisions in the Earth Removal and Zoning By-laws which seem to be somewhat confusing in terms of interpretation. Because of this, the Zoning Board suggested this meeting. He further explained that in the ZBA discussions we raised the question of whether or not the Town needs an Earth Removal Board. The functions could be shared by the Planning and Zoning Boards. For some reason it was determined by the Town that it should be a separate Board. It is the impression of some members of the Zoning Board that it is not necessary to have it that way. So, if that's the case, then the functions of the ERB could be performed by the other Boards. This would require Town Counsel to suggest some changes in the By-Laws. If it is determined that the ERB remain

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in existence then he feels it would require Town Counsel to still come up with some suggested changes in the By-Laws so that the roles of the respective Boards can be clarified, because right now there is a lot of confusion. Going forward when applicants come before each Board, it would be helpful to all of us to have this language clarified. So, this is the reason for this meeting.

Mr. Fox stated that we need to determine if it is the consensus of everyone here as to whether the ERB should or should not continue.

Mr. Philpot suggested that before we determine where it is going to go, we determine why we are here and what we should or shouldn't do. In full disclosure, Mr. Philpot stated that he and Joe Curtin have been discussing this on and off for two plus years. Mr. Fox mentioned a meeting about this back in 2014 with the previous Town Administrator but nothing ever got done on it.

In summation, the Earth Removal By-law is part of our General By-Laws and in order to get a permit you have to come before the ERB and tell them what you are doing and they are allowed to put constraints on it. Once you get your Earth Removal Permit, if you are light industrial, off you go. If you are in any of the other zoning districts in this Town, then you have to go to the Zoning Board and get a Variance because that is what is stated in the Protective By-Laws. So, there is one hitch. The other problem is do you go before the ERB to get a dirt permit and then go to the Zoning Board and spend \$400 for the application fee and then find out you cannot do it. So, there's another problem, where do you go first and why. And when you think about it, the ERB by definition exists to allow people to remove earth under certain conditions, if you meet those conditions, you get your permit. With the ZBA, it is a fifty-fifty shot. If you can demonstrate a hardship off you go. So, in a practical sense, if I were going to do it, I would go to the Zoning Board first and find out whether I can do this or not because if I can't do it, why waste my time going through the ERB. Otherwise, you spend all this time and effort and get your hopes up getting your permit from the ERB and then go to the ZBA and they say, sorry no hardship. So, there's another layer of confusion, which comes first. Next, you to appreciate whether or not it really should require a Variance. Personally, Mr. Philpot stated he does not think it is a Variance because it is a temporary use. Variances are typically very long term if not permanent. Now the simple example is I want to build my cell tower too close to the property line. It's not you are going to build it, leave it there for three years and then move it away. Special permission (Special Permit) that's something different because Special Permits are typically tied to individuals. And this is where we start to mesh with the Earth Removal Permit and how it is written. The ERB says in Section 63 of the General By-Laws ~ if either the property owner or the operator changes, the permit is no good and you have to come back for another permit. Earth Removal leans towards a Special Permit, rather than a variance but that's getting into technical stuff. From a practical sense the ERB has been an orphaned child in the Town of Sterling government. ERB has no budget, no Administrative Secretarial support, we don't meet on a regular basis (only when needed) and even that becomes a problem because people come into the building or however the applications get here they then get put in the ERB mail slot. Mr. Philpot explained for the two years he was Chairman, he would come down to Town Hall and find things that had been there for two weeks. On the other hand this Board (Planning) meets regularly and the Zoning Board meets regularly. So, this way people can start planning their schedules. So, this current arrangement is not at all customer service friendly and

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this is where he enters this discussion and engages the whole process. How do we make this more customer service friendly? Starting with; how do I get a permit, where do I go first, what do I need and all that kind of stuff. Then we get into the legalities which is Mr. Fox's forte which is Special Permits vs. Variances.

Mr. Curtin stated getting back to Mr. Philpot's point, it is not a simple variance because the way the Earth Removal Board General By Laws are written, it kicks you over to the Variance plus what it calls for in the Protective By Laws Section 6.2.2 a (which has some overlapping) from the ERB permit.

Mr. Philpot asked who's going to carry this ball. There are three options; it stays with the Earth Removal Board, Zoning Board takes it or the Planning Board takes it or some combination thereto. Everyone agreed this made sense.

Mr. Fox stated that if the ERB remains then some changes have to be made to the By Laws or if the ERB is dissolved there will still have to be changes made to the By Laws and in either situation Town Counsel will have to be involved.

After a lengthy discussion between all Boards, it was the general consensus that the ERB be dissolved.

Mr. Perry did some research on how the Earth Permit is handled by other municipalities. It is all over the map. Mr. Perry suggested that once the decision is made, you can update the existing By Laws, legal review, then hold a public hearing, and then Town Meeting.

Mr. Philpot stated that the ERB discussed this and thought it would be best for the applicants for good customer service to eliminate the Earth Removal Board. Mr. Pineo agreed as well.

Mr. Philpot stated that the Planning Board discussed this at their last meeting and agreed that they already meet twice a month and do not have the Administrative support as our Adm. Secretary averages only 16 hours per week. The ZBA on the other hand meets once a month if it is needed and has Adm. Support. But maybe it is not all or nothing, maybe it is some combination thereof.

Mr. Curtin stated that some of the ways this could be done is to try to streamline the process. You could create some special Earth Removal permit application which would mesh to a Special Permit application and also remove commercial projects that are getting reviewed by Site Plan Review

Mr. Philpot summed it up; if applicant has a site plan or subdivision to submit to the Planning Board or some other reason to come before the Planning Board, then while they are here roll the Earth Removal into it. If they don't have something that would naturally bring them before the Planning Board then they would go to the ZBA.

Mr. Siver had concerns about the yardage for placement of a septic system. Mr. Philpot stated that right now you are allowed up to a 1,000 yards to place a septic on your lot. The good news is that since we are going to be updating By-Laws there is no reason why we couldn't create different thresholds.

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Mr. Kilcoyne stated that the BOS has no interest in taking over this role.

Mr. Rivers suggested that one or two members of each of the Boards get a copy of the word document of the Protective By Laws and start preparing suggestions on changes to the By Law. And in the future reach out to KP Law for advice on the changes.

Mr. Philpot asked the Planning Board Members would they establish a consensus that the Board is willing to take Earth Removal associated with Site Plan approvals, perhaps ANR lots and Sub-division applications.

Mr. Fox suggested that a couple of members of the PB and ZBA sit down and come up with what they think the new roles of each Board would be.

Mr. Santoro stated that he felt everyone should take a look at this but not vote on it tonight. Mr. Santoro stated that due to litigation, he did not feel comfortable making a decision on the status of what happens to the ERB.

Mr. Rivers agreed but suggested that we should still have a couple of members from each Board get together to discuss drafts of the By Laws but not take over at this point.

Mr. Fox asked if the ERB should contact Town Counsel as to liability if the ERB should be discontinued at some point.

Mr. Perry mentioned that the MRPC is available to help with assistance if the Boards want their help.

Ms. Culgin inquired as to whether each of the two Boards (ZBA & Planning) would be able to issue Special Permits. Mr. Philpot responded yes. Both Boards are recognized as Special Permit granting authorities under our Protective By Laws.

Everyone agreed to the formation of a Working Group consisting of two members of Planning Board, two members of the ZBA and ERB Chair Mike Rivers. Each Board will choose their representatives at their next scheduled meeting.

8:32 PM Joint Meeting adjourned.

Chairman's Report/Notices/Discussions

Agenda item for next meeting

Mr. Kilcoyne asked that discussion of the Community Compact Grant be put on the January 10th agenda.

Tax Collector Memo

Ms. Kazan explained that this memo from the Tax Collector was in response to a letter the Board had sent her requesting Mr. Pichierri's name be added to the list of delinquent persons as he is delinquent in the amount of \$485.23 for incurred expenses from a site review.

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Per Mike Rivers the one year time frame has been modified per MA State Laws. John Kilcoyne will speak with the Tax Collector to make her aware of this.

### **Set date for Public Hearing ~ For the purpose of amending the Town of Sterling Protective By-Laws relative to Marijuana Establishments**

Mr. Pineo moved that the Board set a Public Hearing date for February 28, 2018 at 7 p.m. for the purpose of amending the Town of Sterling Protective By-Laws relative to Marijuana Establishments. Mr. Miller seconded the motion. The motion passed with three in favor and one abstain (Mr. Philpot was not present during this discussion.).

### **Finalize ~ FY 19 Budgets**

Ms. Kazan informed the Board that relative to PB stipends the first year the Board received stipends was in FY99 in the amount of \$100 per member. Stipends have remained the same throughout all fiscal years.

Board members agreed to the following requested FY19 line items; Planning Salary (Stipends) \$5,000.00 total for all five members, MRPC Expense \$2,772.00 and Planning Wage Expense \$18,425.56.

Mr. Santoro will be drafting a memo which will accompany the submission of the FY19 Planning Board budget. Also, a member of the Board will have to attend the Annual Town Meeting to explain the changes to the Townspeople.

### **Rock Breakers (LKQ) Hazardous Spill Procedures**

Mr. Santoro read an email that was sent by Jamie Rheault to Ms. Kazan on December 27, 2017 at 2:24 PM;

*The revised memo will not be ready for tonight's PB meeting. Vincent and I will plan on attending the Jan 20<sup>th</sup> PB meeting, hopefully with the revised memo!*

Board members were very disappointed that the updated memo on hazardous spill procedures was not received as Mr. Campobasso had agreed to make the necessary changes and resubmit an updated memo prior to the Planning Board's meeting on December 27, 2017.

The Board asked Ms. Kazan to send an email to Mr. Rheault and Mr. Campobasso as follows:

*If the updated Hazardous Spill Procedures memo is not submitted prior to the Planning Board's meeting scheduled for January 10, 2018, the Board will vote to have those valves put in.*

### **8:57 P.M. Mr. Philpot left the Meeting.**

### **Town Planner**

The Board agreed to postpone discussion until their next meeting.

### **Planning Board Accomplishments/Goals/Issues**

The Board agreed to postpone discussion until their next meeting.



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Open and expiring Site Plans and Occupancy Permits

The Board agreed to continue this until their next meeting.

Subdivision Rules & Regulations

The Board agreed to postpone discussion until their next meeting.

Condition of General Bylaws

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

9 P.M. MOTION TO ADJOURN

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

APPROVED BY:
