

Final

**STERLING PLANNING BOARD
MEETING MINUTES**

July 31, 2013

– Rm. 202 Butterick Bldg.

Present: Ronald Pichierri – Chairman, ANR Agent
Michael Radzicki – Vice Chairman, MRPC Rep.
Kenneth Williams – Clerk
Charles Hajdu
John Santoro
Lucinda Oates – Administrative Assistant

Chairman Pichierri calls the meeting to order at 7:01 PM.

ANR's.

There are no ANR's

MINUTES APPROVED

Motion: Ken Williams

Second: Mike Radzicki

Motion to approve minutes of July 10, 2013, as corrected, there was no further discussion, three to zero in favor, motion carried.

DISCUSSIONS/REPORTS/FYI

Sterling Solar / Release of Performance Guarantee

A letter, dated July 26, 2013, was received from Bill Tuttle, Sterling DPW and read into record.

Gentlemen,

I have visited the site of Sterling Solar at 12 Wiles Road with regards to the site driveway and find the entrance and apron to be satisfactory. Also, the condition of the road at the entrance of the site is consistent with the rest of Wiles Road.

The performance guarantee funds may be released.

I have attached a picture of the driveway for reference. Could you please advise Sterling Solar in your release letter that the Town will not be liable for any damage to the brick apron which exists within the Town's right-of-way with regard to winter snow plowing and removal.

Sterling Solar LLC, 1716 Lawrence Drive, De Pere, WI 54115, emailed a letter to the Planning Board and was received July 9, 2013, and was read into record.

Final

Dear Mr. Pichierri:

The Performance Guarantee executed by the Sterling Town Treasure on November 28, 2013, which was posted for the proper design and construction of the site driveway at 12 Wiles Road during the construction of the Sterling solar energy system, was in the amount of Five Thousand Dollars (\$5,000.00). Please see the attached document entitled "Performance Guarantee", which details the performance guarantee required to satisfy the condition required by the Town of Sterling Planning Board as stated in the May 9, 2012, Planning Board Meeting Minutes. The construction work has been completed and the site driveway meets the submitted design.

With this letter, Sterling Solar LLC requests that the Town of Sterling Planning Board approve the release of the performance guarantee funds. If in agreement, please sign this document and present it to Anne Cervantes, the Town of Sterling Treasurer and email signed copy of the letter to my attention at JHJansend @intergrysentergy.com.

As a matter of diligence, the solar project owned by CES Sterling, LLC changed its legal name on June 26, 2013; the company's new legal name is Sterling Solar, LLC. When the performance guarantee funds are released, please send the check to: Sterling Solar LLC, Attn: Accounting Department, 1716 Lawrence Drive, De Pere, WI 54115.

Regards,

Joel Jansen, President Sterling Solar LLC

Charles Hajdu took a copy of the letter received from DPW Superintendent, Bill Tuttle and a copy of the conditions noted on the approved Site Plan for 12-18 Wiles Roads that stated that:

The approval is contingent upon the following conditions:

Prior to the issuance of any building permit, the applicant shall post a surety or performance guaranty, acceptable to the Planning Board and to the DPW Superintendant , in the amount of at least \$5,000.00 to secure the proper construction of the intersection of the site driveway and Wiles Road, including a swale for drainage, and to maintain the existing integrity of Wiles Road, which shall be designed in conformance with applicable regulations.

Charles will contact DPW Superintendent, Bill Tuttle, to set up a time to revisit the Wiles Road site and check that the construction meets the Site Plan conditions.

228 Leominster Road

A letter was received, July 16, 2013, from Sterling Building Inspector, Mark Brodeur and was read into record:

Final

*FISHCO, INC.
P.O. Box 37
Sterling, MA. 01564*

Dated: July 16, 2013

RE: 228 Leominster Road, food service building

Dear Mr. Fisher,

This Department is currently in receipt of a Building Permit application reflective of your intention to construct a food service building at 228 Leominster Road. While questions remain as to the construction of the building itself, those questions can be answered in the future.

Unfortunately, that application is being placed on hold as the proposed construction is subject to site plan review in compliance with the Protective By-laws of the Town of Sterling and specifically Section 6.4 of those By-laws.

Enclosed you will find your Permit Application payment which we will not require until such time as the site plan review is complete.

In order to proceed with your project, as proposed, you will need to complete the Site Plan Review process with the Planning Board. In the meantime we will contact your General Contractor in order to flesh out your application and plans with the additional requirement under the Building Code.

Respectfully,

Mark E. Brodeur, Inspector of Buildings

Prior to tonight's meeting, Pat Fisher had submitted a plot plan showing the approximate location of the new construction at 228 Leominster Road. The submitted plans were inadequate per site plan review, and were returned to Pat Fisher.

Human Resources

Donald Jacobs, Human Resources Administrator, attended tonight's meeting to introduce himself and the FY 14 goals of the Personnel Board.

- Objective #1: Review and update the town personnel bylaw
- Objective #2: Review the classification and compensation plan
- Objective #3: Develop an employee personnel handbook
- Objective #4: Review the employee benefit program
- Objective #5: Review and establish an employee training program

USPS Use of Central Mail Boxes

An email was received July 23, 2013, from Building Inspector Mark Brodeur regarding centralized mail delivery, the email was read into record.

To Planning Board:

I have been contacted by the local Post Office with concerns over centralized mail delivery as opposed to house by house.

The Feds came out with regulations some time ago to have new construction development use a central mail box location for the development.

I have place a copy of what I have for regulations from USPS in the PB mail slot and ask that the Board consider this aspect when conducting future site plan reviews for potential sub-divisions.

Mark Brodeur

Continuation of Special Permit Shared Driveway Gary Griffin, dba Sholan Homes, INC. Off Redstone Place, Map 91, Parcel 30

Continued Public Hearing for Shared Driveway was opened at 8:00 pm.

An email was received from Bill Tuttle, Department of Public Works on July 9, 2013 and was read into record.

Sterling Planning Board

RE: Shared driveway, Redstone Place

The DPW Board has discussed the shared driveway plan presented by Mr. Griffin. The only request from the Board was for a larger than normal turn around after the common driveway entrance. I had a conversation with Mr. Griffin regarding the layout of this turn around and, at that time, he agreed to involve the DPW in its planning. The DPW has no other concerns.

With regards to safety considerations, please refer them to either the Fire or Police Departments.

Regards, Bill Tuttle

The meeting was then turned over to Mark Bobrowski, Esq., who was retained by the Sterling Planning Board to give a legal opinion regarding the shared driveway application.

Final

Mark Bobrowski said that after review of the questions presented by the Planning Board in regards to roads, Bobrowski contacted his colleague Sydney Smithers, whom Bobrowski considered the “Dean of Roads”. Sydney Smithers practices in Pittsfield, and has written and is published on the topic of Massachusetts Road Laws.

Bobrowski then read into record his email correspondence with Smithers.

From: Mark Bobrowski

Sent: July 04, 2013

To: Smithers, F. Sydney

In 1958, the Annual Town Meeting of Sterling voted to “abandon” the old road... see scan. I also scanned the 1794 language that laid it out.

In reading your MALSCE materials it seems that this happened when G.L. c. 82.s. 32A was captioned “discontinuance of public ways”. The caption did not change to “abandonment of municipal ways” until a 1983 amendment.

I also noted that by a 2/3 vote a town can vote abandon municipal property pursuant to G. L. c. 40, 15.

Without any reference to the authority under which it acted, how would you construe the 1958 vote of Town Meeting?

Do owners on either side own to the center of the old way?

Thanks, Mark

From: Smithers, F. Sydney

To: Mark Bobrowski

There’s been a case decided since an earlier version of my material; I’ll look tomorrow to see if the most recent materials have caught up with a recent unpublished Appeals Court case.

But action by a Town Meeting as opposed to the selectmen petitioning the County Cmsrs under the old s. 32A or hold a public hearing under the new s. 32 A.

Town meeting action is always c. 82, s. 21 and whether termed (better) a “discontinuance” or (more inaccurate) an “abandonment” it’s likely a discontinuance.

We’ll send something on tomorrow.

Happy 4th to you, Syd

From: Smithers, F. Sydney
Sent: July 5, 2013
To: Mark Bobrowski

Mark:

Here are a few pages from the May 2011 version of Streets and Ways dealing with discontinuance and abandonment and including the Dus case.

The entire paper can be downloaded from the Cain Hibbards website. As I started to say last night, action taken by a town Meeting almost certainly is a “discontinuance” regardless of the verbiage used, and while it is preferable to use the statutory word “discontinue” I would opine that when Sterling used the word “abandon” it in fact discontinued the old way to Redstone place in 1958 because that’s the statutory power of a town meeting. It wasn’t an action taken by those in charge of roads under 81/32 A.

Syd

From: Mark Bobrowski
Sent: July 05, 2013
To: Smithers, F. Sydney

Thanks Syd, I take that to mean the maintenance obligation is over and the abutters own to the center?

MB

From: Smithers, F. Sydney
Sent: July 31, 2013
To: Mark Bobrowski

Yes

Prior to coming to the meeting tonight, Mark Bobrowski emailed Sydney Smithers to clarify his thoughts; the following was read into record.

From: Mark Bobrowski
Sent: July 31, 2013
To: Smithers, F. Sydney

Hi Syd – I’m headed for Sterling tonight. One last question, if you’d be so kind. If the developer owns to the center of the road, as you confirmed, below, can the developer act

Final

unilaterally to build out the road to subdivision standards or does the developer need the consent of the owner of the other side of the road to do so to the extent it involves activity on that portion of the layout outside his half?

Many thanks, Mark

From: Smithers, F. Sydney

Sent: July 31, 2013

To: Mark Bobrowski

That depends on whether the abutter has an easement to use the former town way, now discontinued. See Nylander v. Potter about the possibility of an easement to use what later became a town way, town way then laid out, then discontinued, abutter still has benefit of pre-existing easement.

Highly theoretical and highly improbable.

Probably can't comply w/ subdivision standards in half the width of a town road, which probably was 2 or maybe 3 rods wide.

But Main St in Williamstown is 12 rods wide!

Talk to you soon. Syd

Bobrowski said that in this case (Redstone Place) half of this road is 16 ½ feet, (the entire road is shown as 33 feet). The "Subdivision Rules and Regulations" standards require at least 40 feet for minor roads and 50 feet for thoroughfares.

Bobrowski further wanted to clarify the difference between "discontinuance" and "abandonment".

When a town **abandons** a road it gives up any legal interest whatsoever in the road way.

When a town **discontinues** a road, it discontinues its maintenance obligation, but the road is still a public way under the derelict fee statute, which is for any lot laid out in a town way, which the boundary of the lot in the deed says on a way, the derelict fee statute gives the abutter ownership to the center point of the way and the abutter across the way ownership to the center as well.

In this case, there is a discontinuance of the town's maintenance obligation not abandonment. It is still a public way; it is just not required to be maintained. No development in the roadway can take place over the center line without the consent of both abutters. This would affect the portion that was discontinued back to the time of 1958.

Chairman Pichierri asked if Bobrowski to identify the portion of the road that was discontinued back in 1958. The Planning Board was unable to identify where the discontinued portion started on Redstone Place. Bobrowski said that a surveyor would be needed to identify the location of where the discontinued portion of the road began.

Chairman Pichierri asked Bobrowski about a discontinued public way, if the ownership does not revert to the center line. Bobrowski replied that no, it does not; two things would happen in this case at the same time. Any deed in the Commonwealth says that the boundaries of the lot is the way but unless the fee in the way is reserved in the deed the owner owns to the center of the road – this is called the “derelict fee statute” and this has nothing to do with discontinuance or abandonment. In this case, the discontinuance just discontinues the town’s maintenance obligation. And because the deeds say that the road is bounded by the way then the fee statute gives ownership to the center of the way.

Bobrowski felt that Redstone Place is not built to subdivision standards or even access standards for the fire department to get a truck there to access it for a fire.

Bobrowski said that the ANR plan signed last spring (March 27, 2013) is not conclusive in any way whether a building permit should be issued for these lots to the extent that they are showing frontage on Redstone Place themselves. Clearly, if the road cannot support a fire truck 365 days 24/7 then that ANR does not warrant endorsement, and should not have been endorsed. The Planning Board has no power to rescind an ANR plan. The Building Inspector could reject a building application because the ANR plan was wrongly endorsed by the Planning Board. In this case, the ANR did not take into account access considerations and had the Planning Board done that they have not been able to sign the plan.

Lt. Tom Kokernak (fire representative) said that the communication that the fire department has provided so far revolve around the continuation of a road extension or a shared driveway. The point of whether or not Redstone Place as it exists now is an adequate roadway for apparatus is whether the fire department would be able to get the trucks out after entering the road. In order to give the Planning Board an opinion on the access of Redstone Place for fire apparatus, Kokernak would like to speak to the Fire Chief first and see what his opinion would be. After speaking with the Fire Chief, Kokernak said that the fire department would then be able to give an opinion.

Bobrowski said that the Planning Board was charged with making the decision on the plan. A street may provide frontage only upon determination by the Planning Board that it provides adequate access for fire, police, and emergency vehicles. Chairman Pichierri said that at this point the Planning Board has to make the decision whether Redstone Place does or does not provide frontage and it should be backed up by a statement from the fire chief that he can safely get his vehicles in and out.

Ken Williams suggested to extend the Redstone Place way as it exists now and bring the road up to the standard of the DPW with the addition of an adequate turn-around as defined by the fire department in the form of a cul-de-sac at the end. This was just a suggestion; it would need to be accepted by the applicant.

Mike Radzicki then summarized what had been said previously. There is an issue as to whether there is frontage here and rests upon whether or not the fire department can get their emergency equipment down the road as it currently exists. If there is no frontage then the applicant cannot build. The frontage cannot be illusory; the frontage has to be there. If the applicant improves the road so that there is frontage and emergency equipment can get up and down the road that would require the DPW to give permission for improvement to the road. The road can only be improved to the center of the road, without the permission of the abutters to the other half of the road. All of which depends on the status of Redstone Place....

Motion: Ken Williams

Second: Ron Pichierri

Motion made to continue the Public Hearing for Shared Driveway until August 14, 2013 in room 202, Butterick Building at 8:00 PM, there was no further discussion, five to zero in favor, motion carried.

Mark Bobrowski suggested the “Dean of Roads”; Sydney Smithers provide a determination on exactly where the road was discontinued. Bobrowski will contact Smithers and ask if he would give an opinion on this matter. Bobrowski said he will try to keep the cost to the originally agreed upon dollar amount,(\$1,200.00 including his fee).

BOARD MEMBER RE-ORGANIZATION

Chairman

Motion: Charles Hajdu

Second: Ron Pichierri

Motion made to nominate Ken Williams as Chairman of the Sterling Planning Board, there was no further discussion, five to zero in favor, motion carried.

Vice-Chairman

Motion: John Santoro

Second: Ron Pichierri

Motion made to nominate Charles Hajdu as Vice – Chairman of the Sterling Planning Board, there was no further discussion, five to zero in favor, motion carried.

Clerk

Motion: Ron Pichierri

Second: Charles Hajdu

Motion made to nominate Ken Williams as Clerk to the Sterling Planning Board, there was no further discussion, five to zero in favor, motion carried.

MRPC Representative

Motion: Ron Pichierri

Second: Ken Williams

Motion made to nominate Mike Radzicki as MRPC representative for the Sterling Planning Board, there was not further discussion, five to zero in favor, motion carried.

ANR Agent(s)

Motion: Mike Radzicki

Second: Charles Hajdu

Motion to nominate Ron Pichierri to the position of primary ANR Agent and Ken Williams as the secondary ANR Agent, there was no further discussion, five to zero in favor, motion carried.

ZBA

Notice received July 29, 2013, from the Sterling Board of Appeals, was read into record.

Notice is hereby given that the Board of Appeals of the Town of Sterling after holding a public hearing on the application of Harvey Rittenhouse Revocable Trust to vary the terms of the Protective By-Law of the Town of Sterling with regard to property owned by them and situated on the Easterly and Westerly sides of Kendall Hill Road in said Sterling known as number 87-91 & 96 Kendall Hill Road shown in the Assessors Map Plan Book as Map/Lot #129/2 & 129/31 and being zoned Rural Residential and Farming and requests a variance to repair barn structure and use some of this space for teaching fine arts has:

Voted: To GRANT a use Variance with the Following Stipulations:

1. A use variance for music and visual arts school.
2. That the hours of operation of the music and visual arts school be from 9:00 am to 9:00 pm.
3. All existing parking will remain and any future parking expansion or changes will be subject to review and approval by the Planning Board.
4. That the additional use of the property would be subject to a review and approval of the Sterling Board of Health.
5. That all Federal, State, and Local laws be upheld and all necessary permit be obtained.

ADMINISTRATIVE ASSISTANT REPORT

The Administrative Assistant has nothing to report.

MAIL

Miscellaneous mail was reviewed.

NOTICES FROM OTHER TOWNS

Notices from other Towns were made available for review and were passed on to the Zoning Board of Appeals.

INVOICES

The board members sign payroll.

ADDITIONAL NEW BUSINESS

Final

There was no additional new business.

ADDITIONAL OLD BUSINESS

There was no additional old business.

MOTION TO ADJOURN

Motion: John Santoro

Second: Charles Hajdu

Motion made to close meeting, there was no further discussion, meeting adjourned at 9:40 PM, all in favor, motion carried.

The next regularly scheduled Planning Board Meeting is August 14, 2013 at 7:00 PM.

APPROVED BY:
