

**Final**  
**STERLING PLANNING BOARD MINUTES - July 8, 2015**

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**Present:** Kenneth Williams– Chairman, Clerk  
John Santoro – Vice - Chairman  
Michael Pineo - MRPC Rep. & MRJTC Alternate Rep.  
Russ Philpot – ANR Agent  
Charles Hajdu – Member  
Betty Kazan – Administrative Assistant

Chairman Williams called the meeting to order at 7:00 PM in Room 202 of the Butterick Building.

**ANR's.**

There were no ANR's.

**MINUTES**

Mr. Hadju moved that the Board pass over the minutes and move forward to have the discussion later in the meeting. Mr. Santoro seconded the motion. The motion passed unanimously.

**DISCUSSION**

**61A Release**

A Letter of Intention was received on June 22, 2015, from Charles A. & Patricia A. Pillsbury, regarding their 17 acre parcel located on Heywood & Tuttle Roads, Map 43, Parcel 17, currently under Chapter 61A.

After a review and discussion of the information provided by the applicant, the Board was unable to act on a recommendation until further clarification of the specifics of what exactly they are requesting be removed from Chapter 61A. It was agreed that the Map and Lot number should be spelled out in order for the Board to determine their request. Chairman Williams stated that as a matter of Law (Ch. 61A) the applicant must notify the Town via certified mail which could not be determined. Mr. Williams further states the BOS must notify the Planning Board with BOS Form #61A which must originate in the Selectmen's Office.

Mr. Pineo moved that the Planning Board take no action until the Board of Selectmen properly handles the situation. Also, as is our due diligence, the Board will issue a memo to the Board of Selectmen asking for clarification on the Pillsbury's Letter of Intention. Mr. Philpot interjected that at this point there are two issues; the applicant did not mail the letter via certified mail and the Form 61A Release was not originated by the Board of Selectmen , and confusion over which part of the 17 acre parcel they are requesting be released from 61A, (should provide Map and Lot number) . Mr. Santoro seconded the motion. The motion passed with four in favor and one abstain (Mr. Williams).

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**Note:** After the meeting, Mr. Philpot researched whether the applicant was required to submit the Letter of Intention via certified mail. According to M.G.L. Chapter 61A, Section 14, the owner may submit the Letter of Intent by certified mail or hand deliver.

**ZBA**

There was no ZBA correspondence.

**CHAIRMAN'S REPORT/NOTICES**

The Board received a letter from Brad Harris MRPC Transportation Project Director inviting them to a public presentation (MJTC Meeting) of the draft 2016 Montachusett Regional Transportation Plan. The meeting will be held at the MRPC Offices at 7 p.m. on July 15, 2015. Mr. Pineo indicated that he will be attending.

**ADMINISTRATIVE ASSISTANT REPORT**

Ms. Kazan asked the Board to let her know ahead of time if there was any item(s) on the agenda that they wished to have copies of at the meeting.

**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**

Board members signed the following vouchers:

Payroll for FY 15

Minuteman Press FY 15

MRPC FY 16

**NEW BUSINESS**

**ANR Review, Discussion and Procedures**

Mr. Philpot stated that he came into the office after receiving an email from the Administrative Assistant on Monday, June 22, 2015, asking him to stop by to sign an ANR Plan, Map 43, Parcel 17, Lots 1 & 2 for applicants Charles & Patricia Pillsbury as all conditions had been satisfied. (The ANR Plan had been approved by the Board at the June 10, 2015 meeting with conditions.)

Mr. Philpot stopped by the office the following morning (June 23<sup>rd</sup>) to review the plans. Ms. Kazan explained that the endorsement was contingent upon the plan showing abutters' Book, Page and Parcel or Lot Numbers, a 61A Statement added to the plan, payment in the amount of \$100, Form A completed, and five copies of the updated plans.

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Mr. Philpot asked Ms. Kazan if the BOS had exercised the Chapter 61A Right of First Refusal. She indicated she did not think so but that there was a request kicking around. He asked about the roll back taxes, she was not aware of any of those. He stated that his understanding is that until the property is bought out, it is still under 61A. He felt as the ANR Agent that it would be inappropriate to sign the documents, which would then be sent to the Registry of Deeds. This could potentially create an illegality, and knowing how this building works, it becomes a reality that the land gets sold, the Town doesn't have the back taxes and now the Town is trying to collect the back taxes on property that someone doesn't own. Then the Town would have to spend money for Town Counsel to pursue. He put his thoughts and concerns in an email which he sent out to Ms. Kazan the following morning. This was his reasoning as to why he did not sign the ANR plans. Mr. Philpot also discussed this matter with Town Administrator Michael Szlosek who concurred with Mr. Philpot who then spoke with Ms. Cervantes, Town Treasurer/Collector who was unaware of any payments received by the Town on this matter.

He asked for input from the other Board Members as to their feelings about the matter.

Mr. Santoro stated that Mr. Philpot did not want to sign this document. Mr. Williams stated earlier that he did not know this but now after being questioned, he vaguely remembers. Mr. Philpot asked Ms. Kazan if she had made his reasons (for not signing) known to Mr. Williams, she confirmed she had.

Mr. Santoro stated that in his opinion, the Alternate ANR Agent only signs if the ANR Agent is out of town, sick or unavailable due to absenteeism. He questioned Mr. Williams as to why he signed the ANR application as he knew that Mr. Philpot had been in to sign and because of the above stated reasons chose not to until he could discuss this further with the Board members.

Mr. Santoro moved that the Mr. Williams' signature be removed from the above mentioned ANR Plans as this was a non-authorized signature by this Board. Mr. Philpot seconded the motion with further discussion.

Mr. Santoro addressed concerns over Mr. Williams' lack of professionalism and insisted that it stop. Mr. Santoro asked that Mr. Williams have the same respect for each Board Member as they have for Mr. Williams.

Mr. Williams stated that in his opinion, that was the job of the Alternate ANR Agent to sign after the documents sat in the office for two weeks and this is the way it had always been done. Ms. Kazan stated that the documents sat in the office one or two day (not two weeks). Mr. Williams acknowledged his mistake.

Mr. Philpot stated that he arrived in the office (June 23<sup>rd</sup>) ready to sign the documents. Because he was available to sign and Mr. Williams should not have signed as the Alternate ANR Agent. He questioned Mr. Williams as to why he signed the document.

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Mr. Williams stated that he signed because it took Whitman & Bingham two weeks to get back to this Board with corrections that had been requested.

Mr. Philpot again stated that it was only one day since the corrections had been received in the Planning Board office before he came in to sign. And he knew for a fact that Ms. Kazan had told Mr. Williams that same day that Mr. Philpot had questions. He also knew that Mr. Williams had a conversation with the Town Administrator (that same day) who stated that "I would not have signed it either" but Mr. Williams still signed the ANR Plans.

Mr. Williams's response was that the Board does not need a 61A Release to have an ANR approved. This is why the Planning Board required a statement on the Plan that prior to issuance of a building permit or other kind of change of use of this property, the property has to be removed from the provisions of Chapter 61A and the Town's option of right of first refusal has to be satisfied. There is no stipulation on ANR approvals that the land needs to be free and clear of Chapter 61A.

Mr. Philpot stated that it is in the Town's best interest that this Board respects the Board of Selectmen, and the Planning Board wait for the owners to bring roll back taxes in so that the Town can collect the monies that are owed. There is no reason for this Board to rush ahead and authorize and sign an ANR Plan unless or until those are done. Especially given the confusion around these two lots and particularly because Mr. Williams had heard of Mr. Philpot's concerns from the Administrative Assistant and Town Administrator. And yet, Mr. Williams ignored them and went ahead and signed the plans. Mr. Philpot said he fully agrees with Mr. Williams assertion that there are no legal reasons to prevent endorsement of the ANR lots, which is why stated, in his e-mail that endorsing under these circumstances would be "inappropriate".

Mr. Williams stated that in all the years he has been on the Planning Board that ANRs have always been approved prior to the release of Chapter 61A property. The Building Inspector will not issue a Building permit unless the 61A release has been satisfied. He also mentioned that he is not sure with regard to 61A, if this Board can put further restrictions on the applicant before the ANR Plan gets endorsed.

Mr. Philpot stated that he has concerns over the staffing or lack of staffing at the present time in the Building Department which could easily overlook a statement on a plan. The Planning Board had the ability to exhibit some control by eliminating confusion at no cost to the Town and in fact to great benefit to this Town and we didn't take advantage of that, in fact it was stolen from Mr. Philpot by Mr. Williams when he signed the ANR Plans.

Mr. Santoro stated that first of all it was Ross Associates (not Whitman & Bingham) that had to redraw the plans. The bottom line is that there was an unauthorized signature placed on this ANR. The reason he wants the signature removed is this is a five person

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Board and we had one person on his own accord sign on is one accord after talking with individuals about Mr. Philpot's concerns. In Mr. Santoro's opinion, Mr. Williams signing puts this Board in jeopardy.

Mr. Santoro made to motion (again) to have Mr. Williams' signature removed. Mr. Philpot seconded the motion.

Mr. Pineo stated that an Alternate acts when a person is unable to perform their duty. Mr. Philpot is the ANR Agent and was available to sign and deferred the situation to a meeting for this Board to discuss and determine what the correct procedures are. That Mr. Williams took it upon himself to sign therefore Pineo felt this to be a fraudulent in the eyes of the law.

Relative to ANRs, Mr. Pineo has three properties in which ANR documentation, surveying, etc. was required to get ANRs approved. Mr. Williams' response was this was news to him.

Mr. Hadju expressed concern that the applicant closing and legal implications.

Mr. Philpot stated that he recalled reading in the ANR Handbook that an ANR cannot be rescinded by the Board. He felt it was an internal Board issue.

Mr. Pineo stated that this Board has a future and we should be doing our due diligence for the Town.

The motion failed with four against and one abstain (Mr. Hadju).

**ANR ALTERNATE AGENT**

Mr. Santoro stated that the Board has the option of replacing the Alternate ANR Agent or a mechanism in place so this doesn't happen again.

Mr. Philpot stated that according to M.G.L. Chapter 41, Section 81 P, approval of plans not subject to control law procedure; 'The Planning Board of a city or Town which has authorized any person, other than a majority of the Board, to endorse on a plan the approval of the Board or to make any other certificate under the subdivision control law, shall transmit a written statement to the Register of Deeds and the recorder of the land court, signed by a majority of the Board, giving the name of the person so authorized'. Mr. Philpot summarized the point that "a majority of the Board" could be the Alternate ANR Agent.

Mr. Williams expressed his apology in signing the ANR Plans.

After a discussion, Mr. Santoro made the motion that moving forward there be one ANR Agent (Mr. Philpot) and no Alternate ANR Agent. He further moved that in lieu of the

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ANR Agent's signature, an ANR can be endorsed by a "majority of Planning Board Members" (3 of 5) when ANR Agent is unavailable. Mr. Pineo seconded the motion.

Mr. Williams suggested that this would be penalizing the ANR applicant. If for any reason, the ANR Agent is not able to sign, then it would have to wait until the next meeting for Board members to sign. He suggested that the Board appoint a new Alternate ANR Agent.

Mr. Philpot's understanding is that you can have an Agent or the majority of Board Members sign ANR Plans.

The motion passed with four in favor and one nay (Mr. Williams).

Mr. Williams' personal opinion was that the Planning Board has made a mistake.

**MINUTES**

Mr. Pineo moved that the Board approve the minutes of June 10, 2015 as corrected. Mr. Santoro seconded the motion. The motion passed with three in favor and two abstain. (Mr. Hadju and Mr. Philpot were not at this meeting).

**9:17 P.M. MOTION TO ADJOURN**

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

**The next regularly scheduled Planning Board Meeting is July 29, 2015 at 7:00 PM.**

**APPROVED BY:**

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