

STERLING PLANNING BOARD MINUTES – OCTOBER 11, 2017

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

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OCT 30 2017
TOWN OF STERLING
TOWN CLERK

Mr. Santoro called the meeting to order at 7:00 P.M. in Room 202 of the Butterick Building.

Public Hearing

Mr. Santoro called the Public Hearing to order and read the following: ‘

‘In accordance with the provisions of Chapter 41, Section 81Q, M.G.L., the Planning Board will hold a public hearing on Wednesday, October 11, 2017, at 7 p.m. at the Butterick Municipal Building, Room 202 for the purpose of revising its ANR (Approval Not Required) Procedures, Rules and Regulations, and Fee Schedule. A copy of the proposed changes may be viewed in the Town Clerk’s Office.’

Mr. Philpot explained it has been several years since the ANR procedures had been reviewed by the Planning Board, and much has changed over the years. The Board agreed that it was the right thing to do. Mr. Philpot explained further that it was only fair to the Board and the applicant to formalize the procedures. One was to give this Board some advance notice so that the Board could review the application prior to their meeting and this would shorten the process. Also, in some instances it would allow the Board time to drive by the property in order to familiarize themselves with the property being discussed. Previously, an ANR could be submitted at the Planning Board’s meeting which did not allow any advanced notice.

Mr. Philpot also mentioned that the biggest change for this Board is that we will now pay close attention to the third requirement of the ANR process which is the vital access standard and that will be exhibited to us on a plan by virtue of having topographical lines on the lot plan in two (2) foot vertical increments.

Mr. Philpot explained that he had been in touch with the Town’s Attorney Carolyn Murray who has editorialized the documents and this is what has given us the opportunity to move forward with these documents.

Mr. Santoro stated that Mr. Philpot and Attorney Carolyn Murray did a fantastic job putting everything together with some input from this Board. Mr. Santoro stated that this was going to be a betterment for the Town of Sterling.

Mr. Philpot stated that the one person that has been most critical in the last few weeks has been Ms. Kazan. Mr. Santoro mentioned on Ms. Kazan’s behalf that in her absence, the Board has suffered from her not being here but she has answered the bell remotely and Mr. Santoro was glad to have her back.

Ms. Kazan explained that she has also updated the Appendix A, Subdivision Rules & Regulations and Table of Contents for the Subdivision Rules & Regulations to reflect all the ANR and Fee Schedule changes. She also explained that after the 20 day appeal is over and the

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Town Clerk notifies the Board of no appeals, then a certified attest copy from the Town Clerk's office will be obtained and sent to the Registry of Deeds in Worcester and the Land Court in Boston. Letters will also be sent to all Engineering firms to notify them of the updates as well.

Mr. Philpot explained that as with the ANR changes, the fee schedule had not been updated for several years. Mr. Philpot looked at several comparable towns in the area and a couple of larger towns as well. To put it mildly, they were quite strenuous compared to Sterling. As far as the new fees, Mr. Philpot felt we were just slightly above the average.

Mr. John Kilcoyne inquired as to what is the effective date of the changes. Mr. Philpot stated it would be the date after the 20 day appeal has been completed (November 1, 2017).

Mr. Santoro expressed his appreciation that Mr. Kilcoyne has been attending the Planning Board's meetings.

Mr. Philpot moved that the Board approve the revised ANR Procedures as defined in Form A ~Application Filing Instructions, Checklist for Approval Not Required (ANR) Plans. Mr. Pineo seconded the motion. The motion passed unanimously.

Mr. Philpot moved that the Board approve the revised Fee Schedule as outlined on the Summary Fee Schedule. Mr. Pineo seconded the motion. The motion passed unanimously.

Ms. Kazan confirmed that provided there are no appeals, the Adopted date would be October 11, 2017.

Mr. Kilcoyne commended the Board and Ms. Kazan for getting this up to date. He stated that he doesn't think many people realize how much work goes into this preparation and just looking at all the documentation, Mr. Kilcoyne knew a lot of work goes on behind the scenes.

### **7:20 PM Public Hearing Closed**

Mr. Shapiro moved that the Board close the Public Hearing. Mr. Philpot seconded the motion. The motion passed unanimously.

### **Minutes**

Mr. Pineo moved that the Board approve the minutes for September 27, 2017 as amended. Mr. Philpot seconded the motion. The motion passed unanimously.

### **Warrants**

The Board reviewed one payroll warrant. The Board signed a warrant for KP Law (Primrose Lane).

### **ZBA Notices**

The Board was in receipt of a notice from the ZBA for a Variance Permit to Duane Fogerty property located 319 Leominster Road.

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Chairman’s Report/Notices/Discussions

Building Commissioner ~ Certificates of Occupancy

Mr. Santoro read the following email from Sarah Culgin, Building Commissioner dated October 11, 2017;

‘Please see attached occupancy/temp occupancy certificates. Dawn Metcalf already sent you the cat shelter’s per your earlier request. Because the Board grandfathered their parking and there were no other proposed, required, or implemented changes to the site, they did not seem to need to revisit the Planning Board before they occupied the building.’

The attached Occupancy Certificates attached were:

90 Day Temporary OC	180 Pratts Junction Road	July 10, 2017	Oct. 10, 2017
30 Day Temporary OC	180 Pratts Junction Road (Hydra Tech)	Oct. 10, 2017	Nov. 10, 2017
Certificate of Occupancy	15-21 Chocksett Road Rock Breakers, LLC	November 14, 2016	
Certificate of Occupancy	215 Worcester Road Neady Cats	February 15, 2017	

The Board stated their concerns over Site Plans having not completed their projects but the Building Commissioner issuing a Certificate of Occupancy. During the Planning Board’s meeting of August 30, 2017, Ms. Culgin had agreed that she would not grant any Certificates of Occupancy or Temporary Certificates of Occupancy under any circumstances until the Planning Board closes out a Site Plan.

Mr. Santoro read the following email from Sarah Culgin, Building Commissioner Dated October 9, 2017 in response to a request that the attend the Board’s meeting of October 11, 2017.

‘My superiors have recommended against my attendance at the Planning Board meeting. They feel the Planning Board’s questions can be addressed via email instead. I am inclined to agree with them after our experience at the last Planning Board meeting that I attended. I will send the information you have requested. Thank you, Sarah’

Mr. Philpot asked to let the record reflect CMR 780 Building Code (Court Case); Building Commissioners of the Commonwealth of MA are legally reporting to their appointing authority which is the Board of Selectmen, the Mayor or City Council. As a matter of law, this would be the Board of Selectmen.

Mr. Kilcoyne suggested that Mr. Santoro contact Ms. Culgin and discuss the situation with her.

Mr. Kilcoyne agreed to speak with the Town Administrator about this lack of communication. Mr. Kilcoyne was not aware that Ms. Culgin was ever advised to not attend the Planning Board’s meeting.

Mr. Philpot suggested that perhaps the responsibility of reviewing and approving Site Plans should be the responsibility of the Building Commissioner. Seeing as though the Building

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Commissioner is not willing to honor the agreement to not issue C.O.s under any circumstances which undermines the authority of the Planning Board as it relates to Site Plan Reviews. So in order for the Board to eliminate a problem, Mr. Philpot suggested that the Board investigate relinquishing any authority the Planning Board might have to review and approve Site Plans and send it to the Building Department. Mr. Philpot stated he was not kidding. There was an agreement with Ms. Culgin that she would not issue any C.O.s or Temporary C.O.s under any circumstances until the Planning Board closes out a Site Plan and yet she continues to do so and in the interim she refuses to meet with the Board to discuss the issues. What choice does the Board have? We can either live with the problem or find a way to eliminate the problem. Mr. Shapiro agreed with Mr. Philpot's suggestion. Mr. Shapiro said if Ms. Culgin does not want to listen to the Board then send it to Ms. Culgin.

Mr. Kilcoyne respectfully requested that someone on the Board contact Ms. Culgin and ask her why.

Board members felt that perhaps the hesitation was that she was uncomfortable with a couple of individuals on the Planning Board.

Mr. Philpot mentioned that with respect to the full time people working in this building, they all consider themselves to be paid professionals. Professional by definition sets aside personal differences and performs the job. Mr. Kilcoyne concurred. So, there is no reason for this person not to attend a meeting and have an adult factual conversation and yet she has been ordered not to do so.

Mr. Pineo stated Ms. Culgin is a paid individual and the Board gets compensated \$100 for an entire year and the Board has to have meetings upon meetings to get through this stuff wasting the Board's time. Mr. Pineo told the Board that Ms. Culgin has approached him with issues. His response to her is that if she has issues with the Planning Board, she should come to a meeting and express them in front of the entire Board.

Mr. Philpot stated that the solution is easier than he expected. Mr. Philpot stated that the Planning Board should propose a modification to the wording of the Protective By-Laws under section 6.4 to authorize the Building Commissioner to review and approve Site Plans. Mr. Philpot further explained that this is totally under the Board's control and subject to Town Meeting vote.

Mr. Kilcoyne felt there was definitely a lack of communication and he did not think it was personal. Mr. Kilcoyne felt it was her responsibility to go to the Planning Board meetings.

Mr. Philpot recalled mentioning the importance of not issuing Certificates of Occupancy at the Planning Board meeting of August 30, 2017. He explained that basically a Site Plan is unenforceable if a C.O. has been issued prior to final approval of the Planning Board. The only protection the Town has to ensure that the Site Plan is executed is the withholding of a Certificate of Occupancy.

Mr. Philpot agreed to research the Certificate of Occupancy permit as to any clause regarding issuance in error.

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## Administrative Assistant's Report

### Code of the Town of Sterling

The Town Clerk has now given the Planning Board the official 'Code of the Town of Sterling' (Bylaws).

### Protective Bylaws Updated on website

Per the Town Clerk there is a 90 day appeal before the updates can be posted on the website. The Attorney General's office approved the updates on September 11, 2017 so, per the Town Clerk, the updates will be posted on December 11, 2017 on the website.

### Inquiry of a Marijuana Growth Facility

Ms. Kazan received an inquiry regarding a possible marijuana growth facility. The Board suggested Ms. Kazan refer this inquiry to the Building Commissioner.

### 96-102 Leominster Road

The Board agreed to invite Brian Milisci of Whitman & Bingham or Mr. Chacharone to their next meeting scheduled for October 24, 2017 to discuss 96-102 Leominster Road, Chacharone Properties, LLC, Peer review.

### Updates on Haley & Ward's site visits

The Board received site visit reports from Haley & Ward for Hydra Tech, 180 Pratts Junction Road and Rock Breakers, LLC (LKQ), Chocksett Road. Mr. Philpot asked Ms. Kazan to get some feedback from the Conservation Commission before the next Board meeting. The Board agreed to invite both applicants in to their next meeting scheduled for October 24, 2017 to review these site visit reports.

### Discussion regarding a Public Hearing ~ Marijuana Prohibition Warrant Article

The Board agreed to schedule their Public Hearing on the Marijuana Prohibition Warrant Article. The Board agreed to the following proposed warrant article subject to the Public Hearing:

*'To see if the Town will vote to amend the Town's Protective Bylaws by adding a new Section 4.9B, MARIJUANA ESTABLISHMENTS, that would provide as follows, and further to amend the Table of Contents to add Section 4.9B, "Marijuana Establishments":*

#### **Section 4.9B Marijuana Establishments**

*Consistent with General Laws Chapter 94G, Section 3(a) (2), all types of non-medical "marijuana establishments" as defined in General Laws, Chapter 94G, Section 1, including marijuana cultivators, independent testing laboratories, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Sterling.*

*Or take action relative thereto.'*

A Public Hearing notice will be submitted to the Telegram & Gazette to run on October 17 and October 24, 2017.

### November 25<sup>th</sup> Meeting Cancelled

Due to a lack of a quorum, the Board agreed to cancel the October 25, 2017 meeting and reschedule a meeting for Tuesday, October 24, 2017.

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Special Legal Representation for the Planning Board

Concerns were aired over the requirement of the Planning Board having to get prior approval from the Town Administrator to speak with Town Counsel. The Board felt they should seek out a separate contract for legal representation of Town Counsel. Mr. Philpot suggested we inquire about a separate contract with KP Law. Mr. Santoro agreed to discuss this with John Kilcoyne prior to calling KP Law.

Board Vacancy

The Board agreed to discuss at their next meeting

Update of Master Plan/Master Plan Committee

Mr. Philpot suggested that it could be very helpful if someone from our Board could reach out to Harvard with questions about; how they found a Town Planner, selection criteria, job description, reporting authority, remuneration package, the whole ball of wax.

Mr. Santoro stated he was getting input from the Town of Ayer who had just recently hired a Town Planner. The Ayer Chairman of the BOS is getting Mr. Santoro a copy of the questions that were asked, etc. Mr. Santoro stated he would try to get this information in time for the next meeting.

Mr. Pineo was going to reach out to MRPC to inquire about which Towns have a Town Planner and also any Towns that have recently prepared a Master Plan.

Mr. Philpot stated he would be more comfortable standing in front of a Town Meeting with hard evidence regarding a Town Planner position. The Board agreed to put this topic as an agenda item for their next meeting.

Condition of General Bylaws

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

November 8th Meeting Cancelled

Due to Mr. Santoro and Ms. Kazan not available for the November 8, 2017 meeting, the Board agreed to cancel this meeting and reschedule a meeting on November 15, 2017.

9:45 P.M. MOTION TO ADJOURN

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

APPROVED BY:
