

STERLING PLANNING BOARD MINUTES – OCTOBER 24, 2017

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

‘The Sterling Planning Board will hold a public hearing on Tuesday, October 24, 2017 at 7 pm in Room 202 of the Butterick Municipal Office Building, 1 Park Street, Sterling, MA for the purpose of amending the Town of Sterling Protective By-Laws relative to Marijuana Establishments.

Copies of the amendments may be viewed at the Town Clerk’s Office during regular business hours.’

Mr. Santoro explained that legal notices appeared in the Telegram & Gazette on October 17 and October 24, 2017.

Mr. Pineo explained that this was a technicality as the Planning Board had already had a public hearing earlier this year on this article but the Board of Selectmen failed to put this article on the warrant for the Annual Town Meeting held earlier this year. Therefore, the Planning Board has decided to request it be included on the warrant for the upcoming Special Town Meeting.

Mr. Robert Protano stated that it was his understanding that nothing but medical establishments will be allowed if this article passed. The Board concurred. Mr. Protano also inquired as to the legality of this article. Mr. Santoro responded yes, that Town Counsel had provided the wording for this article.

Mr. Philpot explained that this Board had received this information back in February from the new Town Administrator. The email was received the same day as our meeting. The first concern was violating the Open Meeting Law. The Board had no expectation that they would need to discuss this. The urgency was in order for us to meet the timeline associated with public advertisement and getting it to the printers for the Annual Town Meeting. As Mr. Pineo stated, we have already done this. At that point in time, the laws were vague (less clear). What was clear, at least to some of us was that the Town had two options. One being a moratorium, which buys us time to get our Bylaws straightened out by Zoning District, so on and so forth, in anticipation of allowing, and not being able to stop recreational establishments. The second option, which we saw and was available at the time, was an outright prohibition of recreational establishments. Mr. Philpot couldn’t count the number of hours he has spent writing emails, reading emails, going through the newspapers, speaking with at least three different Town Administrators and Planning Board Chairmen to understand their take on it. As Mr. Pineo had stated, in February, with the help of our Administrative Assistant, a notice was submitted to the

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local newspaper (less than 24 hours after the Planning Board's meeting). The public hearing was held at the next meeting and the Board still did not have an explanation as to why this prohibition article never made it to the Annual Town Meeting warrant. The only article that made it to the ATM warrant was the moratorium, which still exposed the Town from then until the Special Town Meeting. If someone were to apply for a recreational establishment, even though this moratorium made it, we could not prohibit it. Fortunately, nothing like this has happened. Therefore, that is where we are and that is why this Board is moving forward with this marijuana establishment article. A year ago, when we had the referendum question on the State ballot, question #4, it did not pass in this Town. Speaking only for himself, and perhaps some of the other Board Members, Mr. Philpot stated that we take the direction from the voters of this Town. That is how we got on this Board. This is why this Board moved in this direction.

Mr. Philpot stated that back in March he had a discussion with the Town Administrator. Mr. Philpot stated to Mr. Perry that the Moratorium buys us time but does not stop give the Town all the protection that a prohibition of recreational establishments would. Mr. Perry disagreed. After some discussion with Kopelman & Paige, it turned out that it does not.

Mr. Philpot mentioned that there is one medical growth facility that has received a letter of support from the Board of Selectmen. That letter of support from three years ago was written by the BOS without consulting with the Planning Board or to the best of his knowledge any other Board or Department in Town. Nevertheless, that is their authority and that is their right so they did it. The issue is the way the laws were written there could be a link. The term 'Medical Marijuana Establishment' was very broad. It was feasible if you had a medical facility operating in town, they could expand to recreational. Therefore, this prohibition, with wording from KP Law is clear and precise.

Mr. Philpot moved that the Board support the proposed amendment article with one grammatical change as follows:

*'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.'*

Mr. Pineo seconded the motion. The motion passed unanimously.

### **7:12 PM Public Hearing Closed**

Mr. Santoro closed the Public Hearing.

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### Warrants

The Board reviewed one payroll warrant. The Board signed two warrants for Haley & Ward (BTB, Hydra Tech) and Petty Cash.

### Minutes

Mr. Pineo moved that the Board approve the minutes for October 11, 2017 as corrected. Mr. Santoro seconded the motion. The motion passed unanimously.

### 180 Pratts Junction Road, Hydra Tech, As Built and Updates

Brian McCarthy, Project Manager, Licensed Contractor, was on hand representing the applicant.

The Board reviewed the following comments, which were received from Haley & Ward:

*Haley and Ward has completed a review of the as built site plan for 180 Pratts Junction Road. The plan was prepared by Quinn Engineering and is dated September 21, 2017.*

*We visited the site today (October 8, 2017) to observe the as built conditions. We found the site to be developed in conformance with the design intent of the approved site plans. Turf areas on the site are well developed. The infiltration basin was dry at the time of the visit and the drainage system appeared to be functionally properly.*

*Please note the following exceptions to the approved site plan:*

- 1. The landscaped bed, a single tree with shrub and ornamental grass understory, proposed for the southern side of the driveway has been replaced with three deciduous trees planted along the frontage line between the drive and the southern property line.*
- 2. The drain pipe from the catch basin in the driveway to the southern end of the infiltration basin has been changed from 8" PVC C900 water pipe to 12" Corrugated HDPE pipe at a slightly lower elevation. It appears that the lower grade allowed the larger pipe to meet the limits of the catch basin precast while also matching the pipe used elsewhere on the site. The change does not significantly alter the site run off control.*

Mr. McCarthy mentioned that the drain pipes were changed from 8" to 12". He explained that they had the right size in there and they had to be removed because they were damaged. As far as the landscape bed goes, they hired a local person and decided on trees over shrubs.

Mr. Pineo moved that the Board close out the Site Plan Review for Hydra Tech (BTB) 180 Pratts Junction Road, Sterling, MA. Haley & Ward having completed their review of the As Built Plans with minor changes. Mr. Philpot seconded the motion. The motion passed unanimously.

### 96-102 Leominster Road, Chacharone Properties, Site Plan Modification, Update from Haley & Ward (Peer Review)

Brian Milisci of Whitman & Bingham was on hand to review and comment on the site plan submitted for 96-102 Leominster Road.

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The following comments were received from Haley & Ward with responses from Whitman & Bingham Associates in Bold:

Haley and Ward has completed a review of the site plan submitted for the 96-102 Leominster Road. The plan was prepared by Whitman & Bingham Associates, LLC. and is dated September 8, 2017. We offer the following comments.

- 1) *The fire protection capacity of the water distribution system should be evaluated prior to construction approval. This evaluation should include the following components*
 - i) *Fire flow demand based upon proposed construction and NFPA standards. It should be noted if the structure will include fire sprinklers and the applicable code.*
 - ii) *The fire flow capacity to the site should be confirmed with the Sterling DPW or on site testing should be completed as part of the construction approval process.*

Response: The applicant requests that the Planning Board condition a favorable decision to include the following condition:

The fire protection capacity of the existing water distribution system is to be analyzed prior to the submittal of the building permit application. The analysis is to be submitted to the Planning Board, Building Inspector, Fire Department and their respective peer review consultants. The evaluation should include the fire flow demand based upon proposed construction and NFPA standards. It should be noted if the structure will include a sprinkler system and the applicable code. The evaluation should also include the fire flow capacity to the site through the connection to the distribution system. The capacity should be based upon hydrant flow tests conducted by the applicant.

- 2) *It is unusual that both the primary and secondary leaching fields for the septic system are located under parking lots. The Planning Board should confirm with the Department of Health that the locations of these fields is acceptable.*

Response: The original approved site plan for this project showed the two septic fields in approximately the same location. According to the original soil absorption design plan, the Sterling Board of Health granted the required variances. This office confirmed with the Sterling Board of Health agent that the variance was indeed granted. This office will follow up with the Board of Health on this issue.

- 3) *Two future buildings have been included on the proposed site plans, whereas only Building “B” is included in the storm water management calculations. The applicant should clarify if the second building is part of the current site plan application. Any future buildings on the site would require a new filing with your Board.*

Response: The amended proposal only calls for one future building.

- 4) *The applicant should perform a soil investigation to confirm soil types and infiltration rates in the area of the proposed infiltration basin.*

Response: The proposed infiltration basin is exactly as it is shown on the previously approved site plans. However, if the reviewer requires additional soil testing, arrangements will be made to provide such information.

- 5) *Provide details showing the cross section of the berms and inverts for the forebay and infiltration basin to show soil profile under proposed conditions.*

Response: This information will be shown on the revised site plans.

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- 6) *Provide a detail showing the cross section of the infiltration chambers including elevations.*

Response: This information will be shown on the revised site plans.

- 7) *The subcatchment characteristics of P1 should be updated to reflect the most recent proposed conditions. The current P1 subcatchment appears to be oversimplified on HydroCAD. The entire subcatchment is currently routed through a single grass swale north of Building "B", but proposed conditions appear to route some of the flow towards the east side of Building "B" to a second grass swale between the parking lots adjacent to Leominster Road.*

Response: The updated stormwater model utilized the HydroCad model from the previously approved project. However, the model will be revised based on this comment

- 8) *The subcatchment conditions of P3 should be updated to include the parking lot and sidewalks on the west side of Building "B".*

Response: This information has been added to the revised stormwater model. There is a small amount of sidewalk (430 square feet) within the P3 subcatchment, however, the parking lot is tributary to subcatchment P1. The areas within P1 have also been revised in the stormwater model.

- 9) *The proposed 6" HDPE connection from the infiltration basin to the brook should be clarified. On the drawings, the pipe length is 56 feet and the invert out = 96.00'. In HydroCAD calculations, the pipe length is 52 feet and the invert out = 95.00'.*

Response: This inconsistency between plan and stormwater model has been corrected.

- 10) *Trees and shrubs are required for screening open parking lots and landscaping. The applicant should refer to the Town bylaws for planting requirements and submit appropriate information to demonstrate compliance on the proposed site plans.*

Response: The proposed landscaping is the same as the original approved site plan except for plantings directly adjacent to the revised Building B.

- 11) *The applicant should clarify if curbs will be installed in the parking lots.*

Response: Curbing will be utilized around the proposed building. The stormwater system has been designed on a "country drainage" basis and therefore, no curbs are proposed elsewhere on the site.

- 12) *The applicant should submit additional information on the proposed lights around the parking lots, including pole height, light wattage, etc.*

Response: The proposed lighting is the same as the original approved site plan. However, cut sheets will be provided to the board.

- 13) *The Planning Board and the Building Inspector may require an enclosure around the proposed forebay and infiltration basin.*

Response: The proposed infiltration basin is exactly as it is shown on the previously approved site plans. However, if the Planning Board and/or the Building Inspector requires fencing around the stormwater basin, the applicant shall install one.

- 14) *The Town bylaws state that access driveways shall not exceed 22 feet in width. The proposed plans show the driveway opening to Leominster Road is 24 feet in width and the opening to Laurelwood Road is 26 feet in width.*

Response: The proposed driveway egresses are exactly as they are shown on the previously approved site plans.

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**The following comments were received from the various Departments regarding 96-102 Leominster Road:**

### **Board of Health (David Favreau)**

The proposed site plan modification includes a design flow change to the original approved subsurface disposal system. I have corresponded with Mr. Brian Milisci of Whitman and Bingham, and anticipate an amendment to the currently approved subsurface disposal system design by David E. Ross and Associates, Inc dated May 2008 plan L-10855.

### **Conservation Commission (Matt Marro)**

Orders of conditions were submitted to the Planning Board. The only comment I would make is that if the plans change based on what the commission approved then they would have to come back to re-open the hearing to document the change, otherwise the commission is all set.

### **DPW (Bill Tuttle)**

The DPW has no issues or concerns with the project.

### **Building Department (Sarah Culgin)**

I have no issues. They have more than the required amount of parking (accessible, van, and regular) for both proposed buildings.

Mr. Milisci stated he would follow up with the departments (Police & Fire) that have not commented and requested a continuance of the Site Plan Modification to the next Board meeting.

The Board agreed to continue the discussion at their next meeting scheduled for November 15, 2017.

### **Chocksett Road, Rock Breakers (LKQ), Update on site Visit**

Brian Milisci of Whitman & Bingham was on hand to review and comment on the site plan submitted for 96-102 Leominster Road.

The following comments were received from Haley & Ward:

*Haley and Ward has generally reviewed the current conditions of the site of the Rock Breakers LLC Distribution Center now occupied by LKQ. Scott Miller met with Jamie Rheault from Whitman and Bingham on October 6 to walk the site and review the status of construction. The site owner is contemplating an expansion of the structure and recently received an extension of time for site plan approval. The site is presently active as a distribution center.*

*The building and adjacent parking and drainage systems are substantially complete. The front and sides of the site are loamed with moderate vegetation coverage within the proposed turf areas. Loaming and seeding remains to be completed in the bottom of the front and left hand storm water management ponds.*

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*The area behind the structure, adjacent to an active mining operation, remains open gravel and the storm water management pond there is roughly formed. That pond is currently retaining surface run off from the rear of the site. Site work at the rear of the site, beyond the paved surface, has been deferred pending expansion of the principal structure in this area.*

*No evidence of sediment or silt was observed leaving the site. A haybale silt fence remains in place at the site outfall to the wetland areas on the left-hand side of the site. The haybale line is deteriorating and the fabric fence is sagging. **This siltation barrier should be restored or removed subject to the approval of the Conservation Commission as the site is stable.***

*(Note: The following comments were received from the Conservation Commission Agent Matt Marro:*

*“The silt fence haybale barrier can be removed at this point. It was well maintained until the point of stabilization. During the course of construction I had one minor silt event from that site and they were very quick to fix it.*

*My own inspections of the site would agree with Scott Miller's. If the owner does indeed decide to expand the structure, I can re-visit items such as whether or not a new Notice of Intent is need along with new erosion protection.)’*

*The plans include valves on the drains receiving run off from the loading bay areas. The valves allow the surface drainage to be isolated from the receiving ponds in the event of a spill on the paved surface. The valves on the drains entering the front pond are in place. The valve on the discharge to the rear pond has not been installed pending completion of this outfall. **As the site is in use, this valve should be installed in the near term or an alternate response plan established using a spill containment kit to be maintained on site. The site tenant should be instructed on the use of the valves in the event of a spill.***

*The current condition of the site is reasonably stable and well maintained. Pending completion of the recommended tasks outlined above, the site can continue to be operated in this state through your extended completion date of September 2018 without unreasonable risk to the public or environment.*

The Board requested that the applicant establish written protocol for a spill containment plan with a checkoff list. In addition, the Board requested a list identifying the responsible people, job titles would be appropriate. The Board asked that this information be available for their next meeting on November 15, 2017.

### **Chairman’s Report/Notices/Discussions**

Mr. Santoro thanked Mr. Kilcoyne for coming to the Board’s meeting.

### **Special Legal Representation for the Planning Board**

Mr. Kilcoyne checked with Ross Perry, Rich Lane, and KP Law and it is a state law that the Board of Selectmen across the Commonwealth have the final say on legal services. The policy that the BOS have is not changing. The BOS feel they have the right to be in the loop.

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The Board expressed their frustration over micro managing and lack of communication from the Board of Selectmen.

Zoning Enforcement Officer

Mr. Santoro asked Mr. Kilcoyne to update the Board regarding the discussion at the last Planning Board meeting regarding Ms. Culgin's email indicating that her superiors have recommended against her attending the Planning Board meeting.

Mr. Kilcoyne spoke with the Town Administrator regarding this and he indicated that Ms. Culgin was never ordered not to attend meetings. She was told to use her own discretion and if she felt uncomfortable to try and get the information another way. Mr. Kilcoyne suggested that the Board have one contact person to work with Ms. Culgin. He agreed that no one should be forced to attend a meeting if they are uncomfortable in the environment.

Therefore, if there is really something important and she has to come to a meeting Mr. Kilcoyne is sure she will attend. Otherwise, it will have to be done by email or telephone. Mr. Kilcoyne suggested someone reach out to her and get answers to the temporary C.O.s. He also suggested that one person from the Board be her contact or put the Board's questions and issues in writing and address them to the Town Administrator who will take them to the Zoning Enforcement Officer.

Mr. Philpot stated that he had listened to everything Mr. Kilcoyne said. The summation of what was said is this; we have an elected Board that is the Planning Board that is now answerable on her terms to the Building Inspector. She refuses to work with the Board. Therefore, the Board has to figure out a way to communicate with her and that means finding someone that does not make her uncomfortable however she may define uncomfortable. Further, it is now a requirement of this elected Board to have even more time expended writing emails when it could all be covered in a public meeting. What escapes Mr. Philpot is this Board does not meet unless it is in an open meeting which is a legal requirement. How could anyone feel personally uncomfortable in an open meeting? Mr. Kilcoyne stated that it was her prerogative. She is not obligated to go to the Planning Board meetings; it is not in her job description. Mr. Philpot cited Site Plan Review section 6.4 of the Protective ByLaws. 'The following types of activities and uses require Site Plan Review by the Planning Board. So, that establishes us as the Authority to review.' Section 6.1 Administration, this ByLaw shall be administered by the Building Inspector. The Planning Board is an Authority therefore, we do not answer to the Building Inspector. She's the one to come here.'

Mr. Santoro suggested that Mr. Perry contact KPLaw to find out who the authority is. In his opinion, they would affirm that it is in the ByLaw and she should come before the Board.

Mr. Philpot stated this Board would continue. If someone expresses discomfort, appearing before this Board it is their choice but this Board will continue. When problems arise, it will not be this Board's problem to deal with it. It will be the Zoning Enforcement Officer or who else.

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Administrative Assistant's Report

Marijuana Article Summary

The Board agreed to submit the following summary of their recommendation regarding marijuana establishments to Mr. Perry for the Special Town Meeting:

The Planning Board recommended article will prohibit non-medical marijuana establishments from coming to Sterling.

Land Court ANR Signatures

Ms. Kazan informed the Board at we should be providing ANR Signatures to the Land Court. Board Members signed the appropriate documents, which will be sent to the Land Court in Boston.

Open and expiring Site Plans and Occupancy Permits

The Board reviewed the report of open and expiring Site Plans and Occupancy Permits.

Mr. Philpot agreed to draft a letter of violation (Penalties Section 6.1.3 of the ByLaws) to Neady Cats, 215 Worcester Road regarding that they stand in violation of the ByLaw since September 1, 2017, which is the expiration of their site plan.

Mr. Philpot agreed to draft a letter of violation (Penalties Section 6.1.3 of the ByLaws) to JJCEV Realty Trust, J. Spinelli, 140 Pratts Junction Road. Mr. Spinelli had agreed to come back before the Board in September 2017 but he has not. The Board asked Ms. Kazan to email the Building Commissioner regarding 140 Pratts Junction Road, inquiring as to how many building permits have been granted, what certificates of Occupancy have been issued and the dates of issuance.

Board Vacancy

Mr. Philpot mentioned that the individual he thought might be interested in joining the Planning Board decided not to come forward primarily due to the time commitments. He also has another individual who might be interested and will reach out to him as well.

Mr. Santoro stated he has a couple of people in mind and would get back to the Board.

Update of Master Plan/Master Plan Committee

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.

Agenda Item

The Board agreed to add the discussion of the Subdivision Rules & Regulations to the next agenda.

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

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