

ZONING BOARD OF APPEALS MINUTES

DATE: July 12, 2016

TIME: 6:00 pm

LOCATION: Butterick Municipal Building, Room 205

6:00 pm – Sterling Zoning Board of Appeals was *called to order* by Chairman, William Bird. Roll call taken. *Sitting as a Board:* William Bird, Joseph Curtin, Patrick Fox, Richard Hautaniemi and Jerry Siver.

6:02 pm – *Special Permit- Boiteau, Maurice and Anne, 14 Wilder Road:* Chairman William Bird calls forth first Agenda item and reads hearing letter. Maurice Boiteau presents his case to construct an accessory apartment above garage in new single family home at 14 Wilder Road. Board asks how many square feet will the apartment be and does it meet all set backs and parking requirements. Applicant responds 720 sq. feet. Will be the size of the apartment and yes it meets all necessary requirements.

6:05 pm- *Chairman William Bird opens the the public hearing. No comments from the public.*

6:05 pm- *Chairman William Bird closes public hearing.*

6:06 pm- *Joseph Curtin makes motion to grant special permit for an accessory apartment and comply with all Sterling Zoning ByLaws. Jerry Siver Seconded the Motion. All in Favor Motion granted.*

6:08 pm- ZBA Discussion: Patrick Fox will like to revisit and resolve the issue between the Zoning Board of Appeals and Earth Removal Board. Board would like Tax Language on applications to the ZBA to make sure taxes are up to date before applying for a Variance/Special Permit.

6:15pm- Variance- Warren and Ruth Tyler, 38 Rowley Hill Road: Chairman William Bird calls forth second agenda item and reads hearing letter. Ruth and Warren Tyler present their case stating they would like to construct an attached two car garage to existing house on 38 Rowley Hill Road. They are seeking a Variance due to setback issues and ledge on said property. Joe Curtin does state that this particular lot is a unique corner lot.

6:17 pm- *Chairman William Bird opens the public hearing. No comments from the public*

6:17 pm- *Chairman William Bird closes public hearing.*

6:18 pm- *Joseph Curtin makes a motion to grant the Variance for construction of a two car garage. Richard Hautaniemi seconded the Motion. All in Favor. Motion granted.*

6:19 pm- Review of Minutes from June 14, 2016: There being no discussion regarding the proposed Minutes of June 14, 2016. Joseph Curtin *moved to accept the Minutes as presented.* Jerry Siver *seconded. Vote: 5-0 in favor. Motion carried.*

6:30 pm- Special Permit Amended Continuance- Simpson, James B., 40 Redstone Hill/Off Redstone Hill: Chairman William Bird calls forth final Agenda item and proceeds to read hearing letter. Patrick Fox recuse himself from case, due to not being at first hearing. Chairman Bird offers applicant if he would still like to proceed with a 4 member board. It was confirmed yes by applicants Attorney.

Chairman Bird reads planning boards letter of June 29, 2016 attached as Exhibit A, along with Town Clerks letter dated June 9, 2016 attached as Exhibit B. Chairman Bird asks applicants attorney if there is anymore evidence he would like to present. Attorney Brodeur states all the merits of the application has been fully discussed and has no new evidence to submit at this time.

6:37pm- Chairman William Bird opens the public hearing. An abutter states he wrote a letter back in March he would like it to be on record in the minutes. Attached as Exhibit C. Attorney Frank McNamara steps forth and introduces himself as the attorney for all the abutters. Attorney McNamara hands out correspondence as to his research of addressed property and refers to his memo during meeting, attached as Exhibit D. He understands the Board is faced with a tough decision as to whether the road is abandoned or discontinued. Attorney McNamara brings forth the ancillary decision of Derelict Fee Statute, which is a complicated act of legislature and feels this is not applicable in this case. Attorney McNamara states until the status of the road is completely determined, the town is inviting litigation and feels the board has a right to protect the abutters.

Chairman Bird asks Attorney Brodeur for his rebuttal. Attorney Brodeur states he is not going to say abandoned or discontinued. James Simpson owns half way to the middle; Gary Griffin owns halfway to the middle, the Derelict Fee Statute applies in this case. Ownership goes to centerline. Calling it discontinued or abandoned doesn't necessarily matter. His title company has done extensive title work on this property and has indicated the same thing, that the Derelict Fee Statutes applies. Ownership is captured on both sides. Feels it's not necessary to bring in Town Counsel with evidence given.

Several Abutters feel the spirit of the town is not to have multi-family units and condo units will lower property value.

The Board discusses that they have spoken to the Town Administrator and they do need Town Counsel to determine and interpret this case so that all parties involved can move forward. Board request Attorney Brodeur to continue the case to next meeting

7:32 pm- Request to continue the hearing was made by the applicant; the public hearing portion of the meeting remains open and will be continued at the next meeting. Motion to grant a continuance to the next meeting on August 9, 2016, and as a board goes back to Town Administrator and has Town Counsel determine the situation of the roadway once and for all, was made by Joseph Curtin. Seconded by Jerry Siver all in favor, Vote: 4-0 in favor. MOTION TO GRANT CONTINUANCE OF HEARING UNTIL, August 9, 2016 AT APPLICANTS REQUEST.

7:45pm Joseph Curtin made motion to Adjourn, Jerry Siver seconded, No Discussion, Vote: 4-0 All In Favor. Meeting Adjourned.

EXHIBIT A



Town of Sterling

1 Park Street, Sterling, MA 01564

Phone: 978-422-8111 Ext. 2320

Fax: 978-422-0289

Email: planningboard@sterling-ma.gov

RECEIVED

JUN 30 2016

TOWN OF STERLING

TO: Zoning Board of Appeals

FROM: John Santoro, Chairman

DATE: June 29, 2016

RE: Status of Road ~ Lot 30 Redstone Place ~ James B. Simpson

The Planning Board has reviewed the ZBA's 'Continuation of Hearing Notice' dated May 10, 2016 and the memo from William Bird, Chairman of the ZBA dated May 16, 2016.

After a discussion the Planning Board still saw no reason to seek further legal opinion on the matter because as shown in the attached Planning Board minutes of July 31, 2013, the matter was fully discussed with then special legal counsel Mark Bobrowski, Esq. Specifically, Mr. Bobrowski concluded:

Whether the word used was "abandon" or "discontinue", it was confirmed the abutters own to the center of the abandoned/discontinued way. This opinion was further supported by a second 'recognized expert' on such matters, Mr. F. Sydney Smithers, Esq.

The Planning Board was recently (January 25, 2016) provided with a drawing generated, stamped and signed by a Professional Land Surveyor describing the abutting properties.

Given both Mr. Bobrowski's and Mr. Smithers' reputations are beyond reproach, the Planning Board has complete confidence in their opinions and conclusions. Therefore, this Board sees no reason to take this matter further and incur additional legal expenses.

The Sterling ZBA could if they choose make this demand of the applicant.

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

Final

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

Final

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

Sterling Planning Board Minutes, July 31, 2013

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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.

Final

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 statue” 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 statue 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.

Final

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.

Final

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:

EXHIBIT B



Town of Sterling
Office of the Town Clerk

1 Park St, Butterick Municipal Bldg.

Sterling Massachusetts 01564

Home of 'Mary had a Little Lamb'

Tel 978 422 8111 ext 2307

Email TownClerk@Sterling-ma.gov

June 9, 2016

To: Bill Bird, Chairman
ZBA

Re: Red Stone

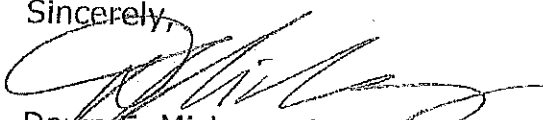
Dear Mr. Bird,

Referencing our telecon earlier this week, I took a few hours to research all documentation we have on file regarding Red Stone. To the best of my knowledge, we have done due diligence and located the following records of Town Meeting and Selectmen votes and 2 maps of Red Stone Place.

1. On Nov. 3, 1794 the Board of Selectmen voted "...a town way across Red Stone, so-called, on land originally laid out to John Prentice, ..."
[Attached is the full description. See Volume 1 page 11]
2. A list of Town Meeting Warrant articles voted various years regarding Redstone Place and Redstone Hill Road with descriptions:
 - a. Article 19 voted Feb 7, 1921: no minutes recorded
 - b. Article 38 voted Feb 14, 1949: voted to open the Old Road from Maple Street to Nelson Road for a distance of seven hundred feet from Maple Street to a point northerly of the Prinsen Property.
 - c. Article 49 voted Feb 4, 1957: voted to table the article (abandon the Old Road)
 - d. Article 43 Feb 15, 1958: voted to abandon the old road from the residence of Duncan Rice to Redstone Place.
3. MAP: no date with the lots from #2- #6E Redstone Place and a detail of the Pavement ending in two places.
4. MAP: dated 1989 for "Common driveway off Redstone Place for 2 lots"

I hope this is helpful. Please let me know if we can be of further assistance.

Sincerely,


Dawn E. Michanowicz, CMC
Town Clerk

ENCLS.

Article #21 Feb. 7, 1921

To see if the Town will vote to discontinue the highway from the house of Bernard Nelson to the house of William H. Burpee, or act relative thereto.

VOTE: Left in hands of Selectmen

(In checking this question out, Mrs. Violet Nelson Shepardson stated that she can remember Charles Patten putting up a sign just beyond her fathers House (Bernard Nelson) which read ROAD CLOSED. William H. Burpee is now the house occupied by Mr. Kirk, formerly Altman or Jones)

I could find nothing in the Selectmens minutes in 1921 pertaining to this road.

Article #38 February 14, 1949

To see if the Town will vote to reopen the Old Road from Maple Street to Nelson Road for a distance of seven hundred feet from Maple Street to a point northerly of the Prinsen property, or any action in relation thereon.

VOTE: Voted to open the Old Road from Maple Street to Nelson Road for a distance of seven hundred feet from Maple Street to a point northerly of the Prinsen Property.

Article # 49 February 4, 1957.

To see if the Town will vote to abandon the Old Road from the residence of Eugene Prinsen to Redstone Place, or take any action thereon.

VOTE: Voted to table the article

(According to the County Records they list:

Redstone Place - Redstone Hill Road to End (also Maple St. end) 0.30 miles

Article #43 February 15, 1958

To see if the Town will vote to abandon the old road from the residence of Duncan Rice to Redstone Place, or take any action thereon.

Voted to abandon the old road from the residence of Duncan Rice to Redstone Place.

Town of



Sterling

MASSACHUSETTS

TO WHOM IT MAY CONCERN:

I, Lois H. Seifert, Town Clerk for the Town of Sterling hereby certify the following vote:

ARTICLE AND VOTE taken at the February 7, 1921 Annual Town Meeting:

ARTICLE 19. To see if the Town will vote to discontinue the highway from the house of Bernard Nelson to the house of William H. Burpee, or take any action thereon.

VOTE ARTICLE 19.

Left in the hands of the Selectmen

A TRUE COPY


Lois H. Seifert, Town Clerk

ATTEST:

A True Copy
Attest:


Sterling Town Clerk

Town of



Sterling

MASSACHUSETTS

TO WHOM IT MAY CONCERN:

I, Lois H. Seifert, Town Clerk for the Town of Sterling, hereby certify the following vote, taken February 14, 1949 Annual Town Meeting.

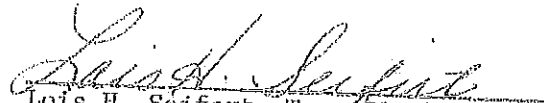
ARTICLE AND VOTE on Article #38

To see if the Town will vote to re-open the Old Road, from Maple Street to Nelson Road for a distance of seven hundred feet from Maple Street to a point northerly of the Prinsen Property, or take any action in relation thereto.

VOTE Voted to re-open the Old Road from Maple Street to Nelson Road for a distance of seven hundred feet from Maple Street to a point northerly of the Prinsen Property.

A TRUE COPY

ATTEST:


Lois H. Seifert, Town Clerk

A True Copy
Attest:


Sterling Town Clerk

Town of



Sterling

MASSACHUSETTS

TO WHOM IT MAY CONCERN:

I, Lois H. Seifert, Town Clerk for the Town of Sterling hereby certify the following vote:

ARTICLE AND VOTE taken at the February 15, 1958 Annual Town Meeting

ARTICLE 43. To see if the Town will vote to abandon the old road from the residence of Duncan Rice to Redstone Place, or take any action thereon.

VOTE ARTICLE 43.

Voted to abandon the old road from the residence of Duncan rice to Redstone Place.

A TRUE COPY ATTEST:


Lois H. Seifert, Town Clerk

A True Copy
Attest:



Sterling Town Clerk

EXHIBIT C

RECEIVED

MAR 07 2016

TOWN OF STERLING

Letter to ZBA
Re: Simpson Permit Amendment
March 7, 2016
Page 1 of 2

Town of Sterling
Zoning Board of Appeals
Mr. William Bird, Chairman
1 Park Street
Sterling, MA 01564

Sirs:

Re: ZBA public hearing regarding requested Special Permit Amendment for Sterling Real Estate Development Co., Inc., James Simpson & Sholan Homes, Inc., Assessor's Map 91, Lot 53(43 Redstone Hill) & Assessor's Map 91 Lot 30 (Off Redstone Hill Road).

This letter is to provide the evidence for verbal comments I made at the 2/9/2016 ZBA hearing and to express my concerns concerning the requested Special Permit Amendment.

To put to rest any doubt concerning what was agreed to at the 2004 and 2014 ZBA hearings, please see the attached excerpts from the approved 2004 special permit, from the 2014 ZBA hearing minutes, and from the 2014 Planning board minutes.

Despite comments made by Mr. Simpson at the February 2016 ZBA hearing suggesting that people misunderstood or miss-recalled, these publicly available official records clearly indicate that we, as was expressed by several citizens at the February hearing, are not mistaken concerning agreements made and reaffirmed: the existing development was not to be connected to Redstone Place including the abandoned portion.

The presently proposed new development, and the proposed storage building, are in direct contradiction to those agreements made by Simpson for the new condo development in 2004, as reaffirmed during the 2014 Planning Board and ZBA hearings for the existing multifamily development off Redstone Hill Road. Reference is made to the issued 2004 ZBA permit, the issued minutes of the Planning Board meeting of 2/26/2014, and the issued minutes of the 2014 ZBA hearing on the current permit.

While it appears that the ZBA erred in omitting the restrictive wording from the issued permit, this does not change the fact that all parties concerned agreed to the following wording in the 2004 permit, and reaffirmed agreement to the same wording in 2014:

"4- Approval is subject to the further condition that no roads, utilities, or other passageways shall be connected through to Redstone Place, including the abandoned portion of Redstone Place."

The ZBA agreed to include this wording in the 2014 permit as documented in the ZBA hearing minutes. Despite this public agreement, the wording was not in the issued ZBA permit.

These multiple prior agreements are critical to the understanding of the apparent lack of trust in the Board and to opposition to the proposed new multifamily development. The neighborhood citizens and I feel that in public we were given assurances that somehow vanished behind closed doors.

Mr. Simpson at the February 9, 2016 ZBA hearing admitted that the existing development is not being constructed in accordance with the reviewed plans upon which the existing permits were based: he

Letter to ZBA
Re: Simpson Permit Amendment

March 7, 2016

Page 2 of 2

eliminated the single bedroom units and instead used the space for two bedroom units as a business decision. From a practical standpoint, because it has fully consumed the approved septic system designs, one could come to the conclusion that the existing development is now fully built out. Any additional units or structures therefore cannot take a credit for the change from one to two bedrooms that was made, presumably without approval from any permitting board.

Regarding the requested permit amendment to add two units, it is a well-known fact that when permits are requested to be opened up for amendment, the permit issuing body, in this case the ZBA, has a right and a duty to correct errors made in the original permit and also has the right to impose any conditions they see fit. That is the risk any permit holder takes when seeking an amendment.


If the Board opens the existing permit for amendment, I urge the Board to right the wrong that was done in the current permit by now inserting the wording that was agreed to in 2004 and 2014 as a precondition to any other modification of the existing permit including but not limited to the addition of any structures or units. This would restore the protections that the citizens believed that they had and restore confidence that participation by citizens in board hearings is not a waste of their time.

I furthermore urge the Board to carefully consider: the history of the multifamily development hearings and agreements, the fact that the existing multifamily development is admittedly not being constructed in accordance with the reviewed plans upon which the existing permits were based and the total impact of expanded multifamily development on this neighborhood and the conservation lands therein.

Regarding the new parcel off Redstone Place, it has frontage on Redstone Place sufficient for two or more single family homes. In keeping with the rural character of the neighborhood, if development of this parcel takes place at all, this frontage should be used to allow single family homes and to preclude multifamily development. Rather than more multi-family housing, a true improvement for the town, the wildlife, the neighborhood residents, and the complex residents themselves, would be to turn the parcel over as conservation space for the benefit of all.

Allowing a tentacle of urbanization to reach out from the existing development across Redstone Place into an area of single family homes would be against the best interests of the Town, would diminish protections for nearby Conservation land, and would be against the well-being of the citizens and abutters who participated in all the prior hearings.

Thank you for your consideration.


Gregory Fynan
13 Redstone Place
Sterling, MA 01564

Attachments:
Excerpt from 2004 ZBA permit
Excerpt from 2014 Planning Board meeting minutes
Excerpt from 2014 ZBA hearing minutes



Town of Sterling
BOARD OF APPEALS

1 Park Street
Sterling, Massachusetts 01564

RECEIVED

TOWN OF STERLING
TOWN CLERK

TOWN OF STERLING
BOARD OF APPEALS
June 21st, 2004

Notice is hereby given that the Board of Appeals of the Town of Sterling after holding a public hearing on the application of Sterling Real Estate Development, Inc. for a Special Permit and a Variance for purposes of development of a 21 unit Multi-Family Residential Development pursuant to Section 4.2 of the By-law pursuant with an access drive located within 150 feet of an existing driveway on property owned by them and situated on the Southerly side of Redstone Hill Road known as numbers 43 and 23 Redstone Hill Road in said Sterling shown in the Assessors Map Plan Book as Map # 91 Lot #s 40 & 53 containing about 20.9 acres and being zoned Neighborhood Residential:

Voted to Grant the Special Permit and the Variance with the conditions that the applicant has submitted but changing number 4 to read:

4-Approval is subject to the further condition that no roads, utilities, or other passageways shall be connected through to Redstone Place, including the abandoned portion of Redstone Place.

Also adding the following conditions:

- 5-Proposed "curtain drain" on abutter property shall be subject to review and approval of Mr. Scott Miller of Haley and Ward.
- 6-All fees and cost associated with the review of proposed drainage systems shall be borne by the applicant.
- 7-Atachment A "Mrs. Claire Fisher's Agreement with Mr. Simpson."
- 8-The Board is accepting the developer's offer to pay \$1,700 in mitigation fee per occupancy permit.
- 9-That the driveway be private.
- 10-That the project be built as per plans submitted to this Board.

A True Copy
Attest:

Melanie J. Clark
Sterling Town Cl.

Final

**STERLING PLANNING BOARD
MEETING MINUTES**

February 26, 2014

– Rm. 202 Butterick Bldg.

Present: Kenneth Williams– Chairman, Clerk
Ron Pichierri – ANR Agent
John Santoro - Member
Lucinda Oates – Administrative Assistant

Late Arrival: Charles Hajdu – Vice-Chairman, arrived at 7:55 PM

Absent: Michael Radzicki – MRPC Rep.

Chairman Williams calls the meeting to order at 7:03 PM.

ANR's.

There are no ANR's.

Senior Center Building Committee provided two documents requested by the Planning Board at the February 12, 2014 meeting. Signatures were needed on both the Agent for Application and Form A. Town Administrator, Jeff Ritter, acting on behalf of the Town of Sterling, signed both documents. Ron Pichierri endorsed the ANR plan prior to tonight's Planning Board meeting.

Update Corrinne Chad Lane

Ron Pichierri and Scott Miller met with Carl Corrinne to discuss his site review account. Invoices, pay outs, and deposits were discussed, Carl Corrinne will return to the March 12th meeting at 7:15 pm to further discuss the matter.

MINUTES APPROVED

Motion: Ron Pichierri

Second: John Santoro

Motion made to approve February 12, 2014 minutes with corrections, no further discussion, three to zero in favor, motion carried.

Senior Center Building Committee

Senior Center Building Committee presentation opened at 7:30 PM.

Mark Piermarini presented the Senior Center Building Committee comments in response to Haley & Ward review, and provided a copy of plan showing revisions.

Final

7) Hydrants should be provided at the end of mains to allow for proper access and flushing.

There are four hydrants proposed on the site plan. Both the Fire Department and the Department of Public Works reviewed the project and had no comments on the site plans.

8) A 3 way water valve configuration should be provided at intersection of Driveways A and B.

Whitman & Bingham Associates proposed two gates at the intersection of McIntosh Way and Honeycrisp Drive. Both the Fire Department and the Department of Public Works reviewed the project and had no comments on the site plan. Scott Miller said that the only time a three way valve configuration would be needed is if the line was tied to Redstone Hill Place.

9) A looped water main connection to Redstone Place should be considered. It appears that an existing hydrant is 600 feet from Driveway B. A three way valve connection should be provided where this new main connects on Driveway B.

The prior approvals for this development required no connection of driveways or utilities to Redstone Place and the owner has continued to show this on the present plan. Jim Simpson said that he will continue to hold true to the abutters and not tie any access to Redstone Place.

10) If the individual units will be billed separately for water use, separate water services with curb stops should be provided to each unit.

Whitman & Bingham has revised the plans to show individual water services to each unit. Scott Miller is in agreement.

11) The septic tanks should include at grade frames and covers.

Whitman & Bingham Associates has revised the plans to show the septic tank covers to grade. Scott Miller is in agreement.

12) Details of the sewer pump chamber controls and power feed should be provided.

Whitman & Bingham Associates will be submitting Soil Absorption System plans to the Board of Health. The sewage pump system details will be on these plans.

13) Electric and CATV service is not shown on the plans. Underground service should be provided.

The plans have been revised to show the electric and CATV services.

TOWN OF STERLING
ZONING BOARD OF APPEALS

Minutes of Meeting

DATE: April 16, 2014

TIME: 6:30 pm

LOCATION: Butterick Municipal Bldg., Room 205

Board Members Present: Joseph Curtin, David Lozier, Richard Hautaniemi,
Alternate Members Present: Jerry Siver, Matthew Campobasso
Board Members Absent: William Bird, Jeffrey Donaldson

Agenda:

6:30 pm - Discussion of Minutes

6:35 pm - Case #631 – Continuance: Jim Simpson – Special Permit
[Special Permit for purposes of construction of a new multi-family dwelling development at 43 Redstone Hill Road in Sterling]

7:05 pm – ZBA Business

- Eight Point Sportsmen's Club re application for special permit to maintain mobile home
- Follow-up re revision to Kennel License Application Form C
- ZBA Resignation of David Lozier
- Administrative matters: accounts payables, budget, seminar notices, time record review and public hearing notices

Proceedings:

6:35 pm – Sterling Zoning Board of Appeals was **called to order** by Acting Chairman, Joseph Curtin. Roll call taken. ***Sitting as a Board:*** Joseph Curtin (Acting Chairman), David Lozier, Richard Hautaniemi, Jerry Siver and Matthew Campobasso.

6:35 pm – Discussion of Minutes: There being no discussion, Mr. Hautaniemi made a ***Motion to accept the Minutes of March 11 and April 8, 2014*** as written. ***Mr. Lozier Seconded. Vote: 5-0;*** Minutes accepted as written.

6:36 pm – Continuance of Case #631 – Special Permit

Applicant Presentation: Jim Simpson, Sterling Real Estate Development and Mark Piermarini, P.E., Whitman & Bingham Associates, presented plans for a proposed multi-family development. ***Mr. Piermarini*** reviewed the proposal consisting of 21 buildings, 2 units in each. Approval by Conservation Commission on 2/4/14. Order of Conditions issued on 3/4/14. Approval of Utilities by Board of Health on 4/10/14. Planning Board public hearings on 1/12, 1/26 and 1/29/14; Approval of Planning Board on 1/29/14; Haley & Ward reviewed the project for drainage; Fire Dept has reviewed the plans as well. The project was previously approved in 2004. Bylaws have changed. Plan has been changed to keep the multi-family neighborhood similar to the single family surroundings. ***Mr. Simpson*** presented and reviewed his narration of reasons why the proposal complies with the protective by-laws of the Town of Sterling. (***Attached as Exhibit A***)

Lea Frantz, 20 Redstone Place - queried if all clearing is complete. **Mr. Simpson** replied there may be a little more. **Ms. Frantz** has a privacy concern and asked if trees will be planted on her property line. **Mr. Simpson** agreed to plant privacy trees. **Ms. Frantz** asked where the lighting will be installed. **Mr. Simpson** replied it would be in the middle of the cul de sac. **Ms. Frantz** expressed concern about blasting and her septic. **Mr. Simpson** showed her on the plan where the blasting would take place. **Ms. Frantz** asked how soon before building and selling? **Mr. Simpson** replied ASAP. (This summer). **Ms. Frantz** asked how the "paper road" would be affected. **Mr. Simpson** replied it will not be touched at all.

Roland Wade, 19 Redstone Hill Road - has a blind driveway and is not able to safely back out onto Redstone Hill Road. He is concerned about the impact the development will have on the added traffic/access issue. Mr. Wade requested a traffic mirror be installed, making it possible to see the oncoming traffic. Mr. Wade also presented a case about reducing the speed limit on Redstone Hill Road and the serious need for sidewalks.

Greg Fynan, 13 Redstone Place - read for the Board's review, his letter to the Board dated March 5, 2014 about stipulations originally agreed upon in 2004 re no cut through towards Redstone Place and that a no-cut buffer zone would be provided along the portion of the property toward Redstone Place. (Exhibit B). He asked if the ZBA would stipulate this matter in their findings. **Mr. Curtin** replied yes, they would.

Donald Patten, 3 Hazelhurst Way - inquired why the ZBA requires a Special Permit? **Mr. Curtin** explained for a multi-family development the applicant is required to get a Special Permit so that it will comply with the zone. A multi-family development is allowed with a Special Permit. It is not allowed by right, but it is allowed by right through a Special Permit. There are certain criteria that need to be addressed. **Mr. Patten** inquired about the distance requirement between driveways. **Mr. Curtin** assured him that will be addressed. **Mr. Patten** expressed concern about property value, and quality of life, which he felt would definitely change with a multi-family development of this magnitude being built in this area. He believes this would be a significant change in the character of Sterling.

Laura Giard, 10 Ashton Lane - expressed concerns about blasting. Ms. Giard asked if all of the units do not sell, who would be responsible for maintaining the property? **Mr. Simpson** replied, my development in Hubbardston still has an association. I am one of the trustees. I am still on the Board and still maintain it. It is 2/3 complete. My best interest as the developer is to make sure it is taken care of if I intend on selling more units. **Ms. Giard** inquired if the building would be done as the units sell, or building all and then sell. **Mr. Simpson** replied the infrastructure and model units would be built as soon as possible and then sales.

Rebecca Piland, 18 Redstone Place - inquired if the tree removal is complete. **Mr. Simpson** replied there may be an occasional tree in the way that will have to go. The majority of the tree cutting is done. The bulk of the clearing was done years ago and all of the stumps were removed, however, re-growth has occurred. So there are small trees which will be cut again. **Ms. Piland** inquired how foundations will be built near the cliff without blasting? **Mr. Simpson** replied not all of them will be cuts. Most of them will be fills. **Ms. Piland** expressed her concern about lighting. **Mr. Simpson** replied that the Planning Board required specific lighting. **Ms. Piland** expressed her concern about schools becoming overburdened. **Mr. Simpson** assured her that this is the best alternative to developing the property. Anything that has single family houses will have more children than what we propose. Short of not developing the land at all, this way is how you would get the fewest number of children. **Ms. Piland** inquired about the selling price. **Mr. Simpson** replied I really do not know yet. I am hoping high \$200's for the 2 bedroom model.

EXHIBIT D

McNAMARA & ASSOCIATES

COUNSELORS AT LAW

Frank L. McNamara, Jr.

53 Wilder Road
Bolton, Massachusetts 01740

July 12, 2016

Tel: (978) 333-9608
franklmcnamara@gmail.com

By Hand Delivery

Mr. William Bird
Chairman
Zoning Board of Appeals
Town of Sterling
1 Park Street
Sterling, MA 01564

Re: Application for Amendment to Special Permit; Redstone Place,
Cider Hill Estates; Assessors Map No. 91, Lots 30 and 53

Dear Mr. Bird:

This office represents certain abutters who oppose the application filed by Sterling Real Estate Development, Inc. for an amendment to the Special Permit issued on April 30, 2014 in connection with a proposed Modified Site Development Plan for a multifamily development known as "Cider Hill Estates Condominium" off Redstone Place in Sterling (the "Plan").

As you know, the application is to be taken up by the Zoning Board of Appeals (the "Board") at its regular monthly meeting scheduled for this evening at 6:00 P.M. in Room 205 of the Butterick Municipal Building.

I write to request that I be given an opportunity to speak on behalf of the abutters at that meeting.

I also write as one who understands that neither the history of this Plan, nor the history of the abutters' opposition to it, began on the day in which I picked up the file. As the Chairman well knows, the record of this dispute extends back many years and has absorbed not only the attention and energies of your tribunal but those of the Planning Board as well.

In reviewing the record before me, it became readily apparent that I was not the first lawyer to analyze the Plan from a legal perspective. So, in the spirit of not reinventing the wheel, I have decided to draw upon the analysis previously supplied to the town by Attorneys F. Sydney Smithers and Mark Bobrowski, and to offer some analysis of my own.

Towards that end, I have attached to this letter as being of particular relevance to the Board's determinations the relevant portions of an eleven (11) page document entitled "Sterling Planning Board Meeting Minutes" dated July 31, 2013 (the "Minutes"). Those Minutes, attached hereto as Exhibit "A", enshrine, among other things, useful legal commentary by Attorneys Smithers and Bobrowski on the status of the discontinued section of Redstone Place, the section that I shall refer to as the "Old Road".

As the Board knows, the Plan involves, among other things, the development of two lots: (i) Lot 53, an approximately 20.9 acre parcel on the northwesterly side and (ii) Lot 30, a 4.271 acre parcel on the south southeasterly side of Redstone Place and the Old Road. The opposition of the abutters centers principally around that portion of the Plan involving Lot 30, and is based on the following three (3) independent grounds, any one of which the abutters maintain is sufficient to justify the Board's denying the application for an amendment to the Special Permit as presently framed.

I. The Status of the Old Road; Violation of Sections 4.2.2 and 4.2.3 (d) of the Protective By-Law

First, in the view of the abutters, the Plan violates Section 4.2.3(d) of the Town of Sterling Protective By Law, the pertinent portion of which provides as follows:

4.2.3 Design Requirements

* * *

(d) Open Space

(1) At least sixty per cent (60%) of the parcel shall be maintained as open space, and at least forty per cent (40%) of the parcel shall be contiguous open space, excluding required yards and buffer areas.

On the record before me the part of the Plan addressing Lot 30 fails to meet the requirement that at least 1.71 acres ($40\% \times 4.271 \text{ acres} = 1.71$) shall be contiguous open space excluding yards and buffer areas.

This violation stems from the fact that Lot 30 and Lot 53 are separated by the Old Road which, despite its status as a *discontinued* road, never lost its status as a public way or, more accurately, as a strip of land as to which numerous public rights, not limited to easements or rights acquired by eminent domain, continue to attach. As a result, for purposes of the Protective By-Law, Lot 30 and Lot 53 must be considered as two separate

parcels, not contiguous parcels that can somehow be conflated into one as the Plan purports to do.

Thus viewed, the portion of the Plan involving Lot 30 (4.271 acres) also fails to satisfy other provisions of the Protective By-Law, such as the dimensional requirement of Section 4.2.2 (a) that lots be a minimum of five (5) acres for multifamily development. What is worse, if that's possible, the Plan proposes to build what is essentially a private way across a public way connecting the two (2) separate parcels, Lot 30 and Lot 53.

This analysis, of course, hinges on the legal determination that the Old Road dividing Lot 30 from Lot 53 is still a public way or, more precisely, a strip of land as to which public rights attach sufficient to separate Lot 30 and Lot 53 into two parcels. That determination, in turn, hinges to a large degree upon whether the town *abandoned* the Old Road or whether the town merely *discontinued* it. If the former, the town may have given up or extinguished its entire "bundle of rights and obligations" with respect to the Old Road, including any and all public easements and rights acquired by purchase or eminent domain and accruing to the town over centuries. If, on the other hand, the town merely *discontinued* the Old Road, the town would have relinquished only a portion of its "bundle of rights and obligations" (for example, the right to maintain the Old Road, the liability associated with its use, and the like) but would have retained a sufficient quantum of rights and obligations so that the Old Road, although *discontinued*, still remains a public way or, again, more precisely, a strip of land as to which a reduced, but ascertainable, bundle of public rights continues to attach sufficient to separate Lot 30 from Lot 53.¹

As Attorneys Smithers and Bobrowski have observed, the critical action taken by the town for purposes of this discussion occurred in 1958 when, at an Annual Town Meeting, it was voted to "abandon" the Old Road from the residence of Duncan Rice to Redstone Place. As Attorneys Smithers and Bobrowski correctly noted, (i) there is an analytical distinction between the act of *discontinuance* and the act of *abandonment*,² and (ii) the statutory authority that inheres in a town meeting is "always" derived from M.G.L. c. 82, §21, and is different from the statutory authority that inheres in one in charge of roads under M.G.L. c. 81, §32A.³

I would here add my own observation: in 1958, as now, the formalities associated with the abandonment of a road are more stringent than those associated with its discontinuance. See M.G.L. c. 81, §12. Even now, the revised version of M.G.L. c. 81, §32A requires the town to hold a public hearing, duly noticed for the purposes, in order to

¹ Minutes at page 7, summarizing the analytical distinction between *abandonment* and *discontinuance* made by Attorney Mark Bobrowski.

² Minutes at page 7; see also, M.G.L. c. 81, §12 that distinguishes between "discontinuing" existing roads and "abandoning" unused easements.

³ Minutes at page 6 (quoting an email exchange between Attorney Bobrowski and Attorney Smithers)

abandon a road.⁴ And as Attorney Bobrowski also intimated, there is nothing in the record to indicate that the 1958 Town Meeting vote was by a two thirds (2/3) majority, the majority required for the abandonment of municipal property under M.G.L. c. 40, §15.

In the final analysis, Attorneys Smithers and Bobrowski both concluded that in taking the action that it did in the forum that it did in 1958 (i.e., by a vote at Town Meeting rather than by a petition by the selectman to the County Commissioners), the town did not follow statutory procedures then in effect for the abandonment of roads, so that the result was “likely a discontinuance” rather than an abandonment of the Old Road.⁵ That the actual vote used the word “abandon” did not change their analysis. As Attorney Smithers observed in an email to Attorney Bobrowski:

*... action taken by a town Meeting [sic] 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 [i.e. the Old Road] to Redstone place [sic] 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 81/32A [M.G.L. c. 81, §12A]. [Emphasis supplied.]*⁶

As Attorney Bobrowski himself explained:

When a town *discontinues* a road, it discontinues its maintenance obligation, but the road is still a public way In this case there is a discontinuance of the town’s maintenance obligation, not abandonment. It [the Old Road] is still a public way; it is just not required to be maintained⁷

In short, the discontinued Old Road remained a public way. Accordingly, it follows as the night the day, that Lot 30 and Lot 53 cannot be considered a single parcel for purposes of the town’s Protective By-Law.⁸

⁴ It is worth noting that a 1983 amendment changed the caption of Chapter 82 from “discontinuance of public ways” to “abandonment of municipal ways”. See Minutes at page 5.

⁵ Minutes at page 5.

⁶ Minutes at page 6.

⁷ Minutes at page 7.

⁸ I would note that on at least three (3) occasions in the past fifteen (15) years, the record before me suggests that the Planning Board has approved plans with ANR status, and in so doing has tacitly considered at least a portion of the Old Road to be a public way. The

Finally, even if the Board should somehow determine that the action taken by the town in 1958 constituted an abandonment of the Old Road, the so-called derelict fee statute would not operate to meld Lot 30 and Lot 53 into one parcel for purposes of the Protective By-Law. That statute provides in pertinent part as follows:

Section 58. Every instrument passing title to real estate abutting a way, whether public or private, watercourse, wall, fence or other similar linear monument, shall be construed to include any fee interest of the grantor in such way, watercourse or monument, unless (a) the grantor retains other real estate abutting such way, watercourse or monument, in which case, ... (ii) if the retained real estate is on the other side of such way, watercourse or monument between the division lines extended, the title conveyed shall be to the center line of such way, watercourse or monument as far as the grantor owns, or (b) the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line.

The object of the derelict fee statute was "to meet a situation where a grantor has conveyed away all of his land abutting a way or stream, but has unknowingly failed to convey any interest he may have in land under the way or stream, thus apparently retaining his ownership of a strip of the way or stream." Rowley v. Massachusetts Electric Co. 438 Mass. 798, 803 (2003), quoting 1971 House Doc. No. 5307. Its intended "effect was to quiet title to sundry narrow strips of land that formed the boundaries of other tracts." Id. To effectuate its purpose, the Legislature made the statute retroactive. See id., at 803.

Applicant will no doubt contend that title to Lot 30 and Lot 53 extends to the center of the Old Road under the derelict fee statute, so that the approximately eighty-eight (88) foot section where Lot 30 abuts Lot 53 along the center line of the Old Road bestows unity of title to Lots 30 and 53, thus rendering them one parcel for purposes of the Protective By-Law. But there is nothing on the record before me to indicate that any grantor connected with either Lot 53 or Lot 30 had unknowingly failed to convey any interest he may have had under the Old Road, thus retaining ownership of a strip of the Old Road. In short, the derelict fee statute does not apply to the facts of this case.

II. Prior Representations

Second, the history of the Plan demonstrates conclusively that from the outset, the understanding of all parties was that there was to be no roadway or passageway access

Planning Board and the Board cannot have it both ways: considering the Old Road a public way when it suits them, and otherwise when it does not.

from the original proposed 20.9 acre multi-family development on Lot 53 to either Redstone Place or to the Old Road. That understanding was integral to the project and was enshrined in the official Notice promulgated by the Board on June 21, 2004 following the public hearing on the original Special Permit. That Notice, a copy of which is attached hereto as Exhibit "B", memorialized the vote of the Board that imposed this restriction as follows:

* * *

Voted to Grant the Special Permit and the Variance with the conditions that the applicant has submitted, *but changing number 4 to read:*

4-Approval is "subject to the further condition that *no roads, utilities, or other passageways* shall be connected through to Redstone Place, *including the abandoned portion of Redstone Place.*" [Emphasis supplied]

* * *

See Notice of Town of Sterling Board of Appeals dated June 21, 2004, attached hereto as Exhibit "B".

This vital restriction was renewed ten (10) years later at a Planning Board meeting held in February 26, 2014. Relevant portions of the minutes of that meeting are attached hereto as Exhibit "C" and record the following representation that James B. Simpson himself made regarding access to Redstone Place:

* * *

The prior approvals for this development required no connection of driveways or utilities to Redstone Place and the owner has continued to show this on the present plan. *Jim Stimpson said that he will continue to hold true to the abutters and not tie any access to Redstone Place.* [Emphasis supplied]

* * *

These representations by Mr. Simpson concerning the inaccessibility of Redstone Place *or the Old Road* were reaffirmed by him at a subsequent Zoning Board of Appeals meeting held on April 16, 2014. The relevant portions of the official minutes of that meeting are attached hereto as Exhibit "D" and record an exchange between Mrs. Gregory Frantz of 20 Redstone Place and Mr. Simpson on the subject, as follows:

Ms. Frantz asked how the “paper road” [i.e., the Old Road – the discontinued section of Redstone Place] would be affected. Mr. Simpson [sic] replied *it will not be touched at all*. [Emphasis supplied]

Moreover, when Mr. Gregory Fynan of 13 Redstone Place inquired at the same April 16, 2014 meeting whether “stipulations originally agreed upon in 2004” regarding “no cut through” towards Redstone Place and a “no-cut buffer zone” along the portion of the property towards Redstone Place would be stipulated by the Board in their findings, Mr. Curtin of the Board is recorded as having replied as follows: “... yes, they would.” Id.

For the Board and Mr. Simpson now to abandon their commitments to a restriction that has been so integral to the approval of the Plan in the first instance would represent an inexcusable breach of faith with the instant abutters. Worse, if that’s possible, it would serve as a signal to every citizen of the Town of Sterling that no neighborhood is safe because no restriction is sacred. Worst of all, it might encourage many citizens of Sterling to extend the corrosive feelings of distrust that they harbor for government at the state and federal level to encompass those good people like yourself involved in government at the local level. And that would be a real tragedy.

In short, the Board has broad discretion in reviewing Special Permits and in granting amendments to Special Permits, but it cannot act arbitrarily or capriciously as it would be doing in this case were it to go back on its promises and approve the application to amend the Special Permit in its present form.

III. Failure to Apply Criteria of Section 4.2.4

The criteria and methodology that the Board should apply in deciding upon applications for amendments to Special Permits for multifamily plans and applications for Special Permits in the first instance are identical, and are set forth in Section 4.2.4 of the Protective By-Law as follows:

4.2.4 Decision In deciding on a Special Permit for Multifamily Dwellings, the following more detailed criteria shall be used in addition to those in Section 1.6. Such Special Permit shall be granted only if the Board of Appeals determines that the proposal would serve town interests better than would single-family development of the same area, considering the following:

- a. Municipal costs and revenues
- b. Effect of the range of available housing choice
- c. Service to identified housing needs
- d. Service to current Sterling residents
- e. Support for local business activity
- f. Impact on the natural environment

- g. Impact on traffic safety and congestion, adequacy of water service, and the need for school facilities
- h. Impacts on the visual environment through preservation or displacement of visual assets, and consistency with existing development in the area.

There is nothing in the record before me to indicate that the Board has made the kind of determinations regarding each of the eight (8) criteria that Section 4.2.4 requires, much less that the Board has determined that the Plan would serve town interests better than would single-family development of the same neighborhood, less still that the Board has explained any of its determination.

In closing, I would urge upon the Board the view that the negative impact of expanded multifamily development on this neighborhood and the nearby conservation land would vastly exceed any marginal benefit that Mr. Simpson or others are likely to derive from the Plan in its present form. Put differently, if this Board denies the application for amendment to the Special Permit, Mr. Simpson will not be unduly harmed in comparison to the harm that will befall the abutters if the Board approves the application. I am reliably informed that Mr. Simpson has not purchased Lot 30; he has only purchased an option on the property. Should the Board deny the application, Mr. Simpson will still be able to purchase Lot 30 and develop it as single family residences if he chooses. All that he will be denied is an opportunity to go back on his word and an unfair windfall for having successfully done so.

It should be noted that the town's By Law is referred to as "Protective". This is not a hollow term. It defines with great precision and force the mission that the individual members of the Board undertake when they agree to serve *the town*.

I suggest that on the state of the record compiled to date, the application should not be approved and I urge you and your fellow Board members to deny it.

Very truly yours,

A handwritten signature in blue ink, reading "Frank L. McNamara, Jr.", with a stylized flourish at the end.

Frank L. McNamara, Jr.

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.

EXHIBIT "A"

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 MALSC'E 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

Final

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

Sterling Planning Board Minutes, July 31, 2013

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EXHIBIT "A"

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.

Sterling Planning Board Minutes, July 31, 2013

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EXHIBIT "A"

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.



Town of Sterling
BOARD OF APPEALS
 1 Park Street
 Sterling, Massachusetts 01564

RECEIVED

TOWN OF STERLING
TOWN CLERK

TOWN OF STERLING
BOARD OF APPEALS
 June 21st, 2004

Notice is hereby given that the Board of Appeals of the Town of Sterling after holding a public hearing on the application of Sterling Real Estate Development, Inc. for a Special Permit and a Variance for purposes of development of a 21 unit Multi-Family Residential Development pursuant to Section 4.2 of the By-law pursuant with an access drive located within 150 feet of an existing driveway on property owned by them and situated on the Southerly side of Redstone Hill Road known as numbers 43 and ~~23~~ Redstone Hill Road in said Sterling shown in the Assessors Map Plan Book as Map # 91 Lot #s ~~40~~ & 53 containing about 20.9 acres and being zoned Neighborhood Residential:

Voted to **Grant** the Special Permit and the Variance with the conditions that the applicant has submitted but changing number 4 to read:

4-Approval is subject to the further condition that no roads, utilities, or other passageways shall be connected through to Redstone Place, including the abandoned portion of Redstone Place.

Also adding the following conditions:

5-Proposed "curtain drain" on abutter property shall be subject to review and approval of Mr. Scott Miller of Haley and Ward.

6-All fees and cost associated with the review of proposed drainage systems shall be borne by the applicant.

7-Atatchement A "Mrs. Claire Fisher's Agreement with Mr. Simpson."

8-The Board is accepting the developer's offer to pay \$1,700 in mitigation fee per occupancy permit.

9-That the driveway be private.

10-That the project be built as per plans submitted to this Board.

A True Copy
 Attest:

Melanie J. Clark
 Sterling Town Cl.

EXHIBIT "B"

Final

**STERLING PLANNING BOARD
MEETING MINUTES**

February 26, 2014

– Rm. 202 Butterick Bldg.

Present: Kenneth Williams– Chairman, Clerk
Ron Pichierri – ANR Agent
John Santoro - Member
Lucinda Oates – Administrative Assistant

Late Arrival: Charles Hajdu – Vice-Chairman, arrived at 7:55 PM

Absent: Michael Radzicki – MRPC Rep.

Chairman Williams calls the meeting to order at 7:03 PM.

ANR's.

There are no ANR's.

Senior Center Building Committee provided two documents requested by the Planning Board at the February 12, 2014 meeting. Signatures were needed on both the Agent for Application and Form A. Town Administrator, Jeff Ritter, acting on behalf of the Town of Sterling, signed both documents. Ron Pichierri endorsed the ANR plan prior to tonight's Planning Board meeting.

Update Corrinne Chad Lane

Ron Pichierri and Scott Miller met with Carl Corrinne to discuss his site review account. Invoices, pay outs, and deposits were discussed, Carl Corrinne will return to the March 12th meeting at 7:15 pm to further discuss the matter.

MINUTES APPROVED

Motion: Ron Pichierri

Second: John Santoro

Motion made to approve February 12, 2014 minutes with corrections, no further discussion, three to zero in favor, motion carried.

Senior Center Building Committee

Senior Center Building Committee presentation opened at 7:30 PM.

Mark Piermarini presented the Senior Center Building Committee comments in response to Haley & Ward review, and provided a copy of plan showing revisions.

Sterling Planning Board Minutes: February 26, 2014

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EXHIBIT "C"

7) Hydrants should be provided at the end of mains to allow for proper access and flushing.

There are four hydrants proposed on the site plan. Both the Fire Department and the Department of Public Works reviewed the project and had no comments on the site plans.

8) A 3 way water valve configuration should be provided at intersection of Driveways A and B.

Whitman & Bingham Associates proposed two gates at the intersection of McIntosh Way and Honeycrisp Drive. Both the Fire Department and the Department of Public Works reviewed the project and had no comments on the site plan. Scott Miller said that the only time a three way valve configuration would be needed is if the line was tied to Redstone Hill Place.

9) A looped water main connection to Redstone Place should be considered. It appears that an existing hydrant is 600 feet from Driveway B. A three way valve connection should be provided where this new main connects on Driveway B.

The prior approvals for this development required no connection of driveways or utilities to Redstone Place and the owner has continued to show this on the present plan. Jim Simpson said that he will continue to hold true to the abutters and not tie any access to Redstone Place.

10) If the individual units will be billed separately for water use, separate water services with curb stops should be provided to each unit.

Whitman & Bingham has revised the plans to show individual water services to each unit. Scott Miller is in agreement.

11) The septic tanks should include at grade frames and covers.

Whitman & Bingham Associates has revised the plans to show the septic tank covers to grade. Scott Miller is in agreement.

12) Details of the sewer pump chamber controls and power feed should be provided.

Whitman & Bingham Associates will be submitting Soil Absorption System plans to the Board of Health. The sewage pump system details will be on these plans.

13) Electric and CATV service is not shown on the plans. Underground service should be provided.

The plans have been revised to show the electric and CATV services.

TOWN OF STERLING
ZONING BOARD OF APPEALS

Minutes of Meeting

DATE: April 16, 2014

TIME: 6:30 pm

LOCATION: Butterick Municipal Bldg., Room 205

Board Members Present: Joseph Curtin, David Lozier, Richard Hautaniemi,

Alternate Members Present: Jerry Siver, Matthew Campobasso

Board Members Absent: William Bird, Jeffrey Donaldson

Agenda:

6:30 pm - Discussion of Minutes

6:35 pm - Case #631 – Continuance: Jim Simpson – Special Permit

[Special Permit for purposes of construction of a new multi-family dwelling development at 43 Redstone Hill Road in Sterling]

7:05 pm – ZBA Business

- Eight Point Sportsmen's Club re application for special permit to maintain mobile home
- Follow-up re revision to Kennel License Application Form C
- ZBA Resignation of David Lozier
- Administrative matters: accounts payables, budget, seminar notices, time record review and public hearing notices

Proceedings:

6:35 pm – Sterling Zoning Board of Appeals was called to order by Acting Chairman, Joseph Curtin. Roll call taken. **Sitting as a Board:** Joseph Curtin (Acting Chairman), David Lozier, Richard Hautaniemi, Jerry Siver and Matthew Campobasso.

6:35 pm – Discussion of Minutes: There being no discussion, Mr. Hautaniemi made a *Motion to accept the Minutes of March 11 and April 8, 2014* as written. **Mr. Lozier Seconded. Vote: 5-0;** Minutes accepted as written.

6:36 pm – Continuance of Case #631 – Special Permit

Applicant Presentation: Jim Simpson, Sterling Real Estate Development and Mark Piermarini, P.E., Whitman & Bingham Associates, presented plans for a proposed multi-family development.

Mr. Piermarini reviewed the proposal consisting of 21 buildings, 2 units in each. Approval by Conservation Commission on 2/4/14. Order of Conditions issued on 3/4/14. Approval of Utilities by Board of Health on 4/10/14. Planning Board public hearings on 1/12, 1/26 and 1/29/14; Approval of Planning Board on 1/29/14; Haley & Ward reviewed the project for drainage; Fire Dept has reviewed the plans as well. The project was previously approved in 2004. Bylaws have changed. Plan has been changed to keep the multi-family neighborhood similar to the single family surroundings. **Mr. Simpson** presented and reviewed his narration of reasons why the proposal complies with the protective by-laws of the Town of Sterling. (*Attached as Exhibit A*)

EXHIBIT "D"

Lea Frantz, 20 Redstone Place - queried if all clearing is complete. **Mr. Simpson** replied there may be a little more. **Ms. Frantz** has a privacy concern and asked if trees will be planted on her property line. **Mr. Simpson** agreed to plant privacy trees. **Ms. Frantz** asked where the lighting will be installed. **Mr. Simpson** replied it would be in the middle of the cul de sac. **Ms. Frantz** expressed concern about blasting and her septic. **Mr. Simpson** showed her on the plan where the blasting would take place. **Ms. Frantz** asked how soon before building and selling? **Mr. Simpson** replied ASAP. (This summer). **Ms. Frantz** asked how the "paper road" would be affected. **Mr. Simpson** replied it will not be touched at all.

Roland Wade, 19 Redstone Hill Road - has a blind driveway and is not able to safely back out onto Redstone Hill Road. He is concerned about the impact the development will have on the added traffic/access issue. Mr. Wade requested a traffic mirror be installed, making it possible to see the oncoming traffic. Mr. Wade also presented a case about reducing the speed limit on Redstone Hill Road and the serious need for sidewalks.

Greg Fynan, 13 Redstone Place - read for the Board's review, his letter to the Board dated March 5, 2014 about stipulations originally agreed upon in 2004 re no cut through towards Redstone Place and that a no-cut buffer zone would be provided along the portion of the property toward Redstone Place. (Exhibit B). He asked if the ZBA would stipulate this matter in their findings. **Mr. Curtin** replied yes, they would.

Donald Patten, 3 Hazelhurst Way - inquired why the ZBA requires a Special Permit? **Mr. Curtin** explained for a multi-family development the applicant is required to get a Special Permit so that it will comply with the zone. A multi-family development is allowed with a Special Permit. It is not allowed by right, but it is allowed by right through a Special Permit. There are certain criteria that need to be addressed. **Mr. Patten** inquired about the distance requirement between driveways. **Mr. Curtin** assured him that will be addressed. **Mr. Patten** expressed concern about property value, and quality of life, which he felt would definitely change with a multi-family development of this magnitude being built in this area. He believes this would be a significant change in the character of Sterling.

Laura Giard, 10 Ashton Lane - expressed concerns about blasting. Ms. Giard asked if all of the units do not sell, who would be responsible for maintaining the property? **Mr. Simpson** replied, my development in Hubbardston still has an association. I am one of the trustees. I am still on the Board and still maintain it. It is 2/3 complete. My best interest as the developer is to make sure it is taken care of if I intend on selling more units. **Ms. Giard** inquired if the building would be done as the units sell, or building all and then sell. **Mr. Simpson** replied the infrastructure and model units would be built as soon as possible and then sales.

Rebecca Piland, 18 Redstone Place - inquired if the tree removal is complete. **Mr. Simpson** replied there may be an occasional tree in the way that will have to go. The majority of the tree cutting is done. The bulk of the clearing was done years ago and all of the stumps were removed, however, re-growth has occurred. So there are small trees which will be cut again. **Ms. Piland** inquired how foundations will be built near the cliff without blasting? **Mr. Simpson** replied not all of them will be cuts. Most of them will be fills. **Ms. Piland** expressed her concern about lighting. **Mr. Simpson** replied that the Planning Board required specific lighting. **Ms. Piland** expressed her concern about schools becoming overburdened. **Mr. Simpson** assured her that this is the best alternative to developing the property. Anything that has single family houses will have more children than what we propose. Short of not developing the land at all, this way is how you would get the fewest number of children. **Ms. Piland** inquired about the selling price. **Mr. Simpson** replied I really do not know yet. I am hoping high \$200's for the 2 bedroom model.

EXHIBIT "D"