

ZONING BOARD OF APPEALS MINUTES

DATE: September 13, 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, Jerry Siver, Matthew Campobasso.

6:01 pm – ***Special Permit Continuance- Neady Cats Corp, Norman Sarkisian, President, 215 Worcester Road:*** Chairman William Bird calls forth first Agenda item and reads hearing letter. Attorney Wayne Leblanc steps forth as representation for the applicant. Attorney Leblanc reviews the intentions of the applicant. He states that they made an offer on said property and it was accepted by owner Gabrielle Palmer Inc. with intentions of operating a cat shelter for taking in, processing and adopting cats on the first floor with all cats kept inside of building with continued use on the second floor. The cat shelter had to go through a process with the Zoning Board in order to be accepted. Said applicant and Attorney came forth on July 14, 2016 in front of the board only to have case continued due to a site plan approval by the planning board first. The Site Plan was approved on August 31, 2016 at Planning Board meeting. Attorney Leblanc states the cat shelter facility has existed over 30 years. Neady Cats Corp only takes in a certain number of cats, is a no kill center, can visit by appointment only, no cats are allowed outside and is manned basically 24/7. One concern was the Board of Health letter attached hereto as Exhibit A. Attorney Leblanc addressed all issues from Board of Health, attached hereto as Exhibit B. Pat Fox asked the question of how many cats can be housed within this facility. Applicant answered no more than thirty.

6:17 pm- Chairman William Bird opens the the public hearing.

An Abutter of said property states he has no objective of this cat shelter and is satisfied with Neady Cats moving in next door. Training Director of Neads states this shelter is very clean, orderly, non-profit and odor free. As a volunteer it's very well organized. Each cat has its own health record and the shelter is very disciplined, for it only takes as many cats as shelter can accommodate.

6:22 pm- Chairman William Bird closes public hearing.

6:23 pm- Patrick Fox makes motion to grant special permit for cat shelter under two conditions:

1. Abide by Counsel letter attached above as Exhibit A.

2. Abide by Board of Health letter attached above as Exhibit B.

Joseph Curtin seconded the motion, All in Favor. Motion granted.

6:24 pm- Variance – Bodwell, Kirk, 16 Laurel Avenue: Chairman William Bird calls forth second agenda item and reads hearing letter. Kirk Bodwell stands and states his intentions of wanting to build a home on Laurel Avenue which does not quite fit the zoning setbacks. He is asking for a Variance to place a new home on the property, a little larger than old footprint, and with that it will improve the area.

6:30 pm- Chairman William Bird opens the public hearing. No comments from the public

6:31 pm- Chairman William Bird closes public hearing. Discussion from Board is how this project will improve the area.

6:31 pm- Patrick Fox makes a motion to grant the Variance for a new home. Joseph Curtin seconded the Motion. All in Favor. Motion granted.

6:33 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 recues himself from case, due to not being at first hearing. Chairman Bird reads the Opinion Letter the town received on September 13, 2016 from Town Counsel regarding ownership of the same parcel of land in question. Attached as Exhibit C. Chairman Bird also states as of last meeting there was no quorum in which Jim Simpson would have automatically been granted permit, but Mr. Simpson graciously offered to continue for all voices to be heard. Chairman Bird reiterates the Boards Charter.

Attorney Brodeur, applicants counsel, states that he has no additional offering of facts. A title search has been done, there have been 5 hearings of said case and Town Counsel has answered the issue in question. Applicant also hands out map of discontinuance research. Attached as Exhibit D.

6:42pm- Chairman William Bird opens the public hearing. Attorney Frank McNamara, counsel for the abutters, requests he be given the Opinion Letter, Attorney Brodeur's August 3rd letter and the July 12 Minutes. Abutter presents a recap of some facts attached hereto as Exhibit E. An abutter also states they have lived in Sterling since 2005 and they are ashamed how money can buy town government. The Board states it's an adjudication process. All factors are accounted for, one party prevails, and one does not.

Attorney Brodeur requests the Board to wrap up the proceeding. The applicant has met all the needs in Section 2.4.4. Attorney Everett from KP Law, town counsel, speaks about the opinion letter attached above. An abutter asks Attorney Everett if any consideration of pathway that has been used by public way have any squatters' rights? She states she would need to find case law to support the question at hand. An Abutter asks about police and fire access to get into development from Redstone end and Maple as to who will be responsible for building that? The Board states the Planning board will include that in their plans. Another abutter states that this is the most inorganic plan she's ever seen. Another abutter states that the water is physically higher than Matthew Lane. She feels as though the water tower can't hold enough water. Others are questioning the said Amended Special Permit, if it should have been a new Special Permit

and not amended. The Board states Attorney Murray answered that issue. See letter attached as Exhibit F.

7:45pm- Chairman William Bird closes the public hearing. Board discusses application presented.

8:25 pm- Richard Hautaniemi makes motion to grant Special Permit Amended for 40 Redstone hill/Off Redstone Hill. Joseph Curtin requests the following stipulations:

- 1. Connection of new roadway (Shamrock Way) for vehicular traffic, shall not be connected through to Redstone Place at the Maple street end (westerly end) or Redstone Place at the Redstone Hill Road end (easterly end). Development roadways to be constructed in accordance with plans titled "Cider Hill Estates, Modified Site Development Plan off Redstone Hill Road, Sterling, Massachusetts" dated January 25, 2016 with revision 1 dated 2/8/2016, revision 2 dated 3/29/16 and revision 3 dated 4/1/2016.**
 - 2. The applicant shall grant the right for pedestrians to pass and repass on foot over the existing path shown on the plans titled "Redstone Place" Sheet 1 of 9 of the above referenced plans.**
 - 3. The portion of the pedestrian foot path that crosses the proposed Shamrock Way, shall be marked with appropriate signs and pavement marking in accordance with the latest addition of the Manual on Uniform Traffic Control Devices (MUTCD) for pedestrian safety.**
 - 4. A no touch buffer shall be maintained in the areas indicated on the attached plan. No tree cutting or other site work related activities shall occur in these areas (see sheet 3 of 9).**
 - 5. A stone/boulder wall shall be constructed along the Northeast property line as indicated on the attached plan. The purpose of the stone/boulder wall is to deter vehicular traffic from exiting Shamrock Way to the existing Redstone Place.**
 - 6. Evergreen trees of a specific size and type (minimum 2 ½ caliper) to be determined at a later date and approved by the Planning Board for visual screening, shall be installed by the Applicant along the property line indicated on the attached plan.**
- Richard Hautaniemi seconded the motion, All in favor, Motion granted, Vote 5-0.**

8:40 pm- Board offers the abutters a 5 minute review of the decision.

8:46 pm- Review of Minutes from August 9, 2016: There being no discussion regarding the proposed Minutes of August 9, 2016. Joseph Curtin *moved to accept the Minutes as presented.* Jerry Siver *seconded.* **Vote: 5-0 in favor. Motion carried.**

8:49 pm- Matthew Campobasso made motion to Adjourn, Jerry Siver seconded, No Discussion, Vote: 5--0 All In Favor. Meeting Adjourned.



Town Of Sterling

Board of Health

Butterick Building

1 Park Street • Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2305 • FAX: (978) 422-0289

EXHIBIT A

Date: September 12, 2016

To: Sterling Board of Appeals

From: Board of Health

Subject: 215 Worcester Road - Needy Cat Facility

At a meeting on September 8, 2016, the Board of Health discussed its concerns regarding the application of the Needy Cat organization for a facility on Worcester Road. The specific concerns are:

- How will animal waste generated by the facility be managed?
- Will the facility generate medical waste? If this is the case, what are the disposal methods that will be employed in the disposal of medical waste including sharps?
- Will biological specimens be received and handled at the proposed facility? If so, what are the specific methods to be employed in receiving and handling these materials?
- It is our understanding that the building will also house an upstairs apartment. What precautions will be in place to prevent human contact between the occupants and their visitors and the cats and materials previously mentioned?

Furthermore it is important to note that animal waste and medical waste may not be disposed of through an onsite septic system.

The Board of Health requests that the Zoning Board of Appeals withhold final approval for the facility until these matters are fully addressed.

David Favreau
Health Agent

EXHIBIT B

GLICKMAN, SUGARMAN, KNEELAND & GRIBOUSKI

ATTORNEYS AT LAW

11 HARVARD STREET

P.O. BOX 2917

WORCESTER, MASSACHUSETTS 01613-2917

DAVID W. SUGARMAN
DAVID J. KNEELAND, JR.
JAMES J. GRIBOUSKI

(508) 756-6206
FAX (508) 831-0443

RECEIVED

SEP 13 2016

TOWN OF STERLING

WAYNE M. LEBLANC
ALEX M. MOORADIAN

OF COUNSEL

MELVYN GLICKMAN
JAMES G. HADDAD
LUIS G. PEREZ

September 13, 2016

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

David Favreau, Health Agent
Town of Sterling
Board of Health
1 Park Street
Sterling, MA 01564

Re: Application for Special Permit

Applicant: Neady Cats Corp.

Property Location: 215 Worcester Road, Sterling, Massachusetts

Dear Mr. Chairman and Mr. Favreau:

Please be advised that I represent the interests of Neady Cats Corp., a non-profit corporation in the Commonwealth of Massachusetts, who has submitted an application for a Special Permit to use the first floor of the building located at 215 Worcester Road, Sterling, Massachusetts as a cat shelter.

On July 14, 2016, an Application with supporting documentation was filed with the Board of Appeals. A hearing on this matter was scheduled for August 31, 2016. Due to the determination that a Site Plan Review was necessary, the hearing was postponed to this evening, September 13, 2016.

This letter is intended to be a written response to a letter dated September 12, 2016, received by my client, the Applicant today, September 13, 2016. I would like to preface this letter by indicating that my client took a pro-active approach to the situation by contacting the Sterling Board of Health and meeting with Kathie Nickerson, Associate Health Agent, and David Favreau, Health Agent for the Town of Sterling, at the Board of Health Offices on June 14, 2016. The Applicant was represented by Norman R. Sarkisian and Marilyn Sarkisian, Officers in the Neady Cats Corp. corporation. I am informed that the Sarkisians made inquiry with the Board of Health representatives at that time relative to any questions or concerns which the Board of Health may have had regarding the establishment of a cat shelter on the first floor of the above referenced property. After discussions between the parties, I am informed that the Board of Health representatives indicated that they had no concerns and were satisfied with regard to the proposed cat shelter operation to be conducted, if the proper approvals were obtained.

Needless to say, it was quite a shock today for my client to receive the letter from the Board of Health, a copy of which is attached.

William Bird, Chairman
David Favreau, Health Agent
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In an effort to be responsive to the Board of Health's inquiry and assistive to the Board of Health as well as the Board of Appeals, my client has provided me with response to the following concerns set forth in this letter.

These responses are as follows:

Question 1:

How will animal waste generated by the facility be managed?

Response 1:

There will be cats only at the shelter. Cat waste will be deposited of throughout each day, seven days a week, into sealed plastic trash bags. Such bags will be deposited in a five yard dumpster to be located to the rear, north side of the shelter. The dumpster will be emptied each week by a local trash removal company. Please note that we have never received a complaint about trash odor at any of our locations during the past 30 years that we have been in operation. No cat waste will be entered into the septic system or disposed of in any other manner.

Question 2:

Will the facility generate medical waste? If this is the case, what are the disposal methods that will be employed in the disposal of medical waste including sharps?

Response 2:

The only medical waste generated at the shelter will be needles and caps, which will be put into a medical waste machine and sterilized. Medical Innovations of Worcester, MA provides these machines. A flyer from the company provides additional details. All unused needles kept at the shelter are stored in a locked cabinet. No surgical or other procedures are undertaken at the shelter. Therefore, no other medical is generated.

Further, Dr. Moss of Central Animal Hospital in Lcominster, who is also a member of our Board of Directors of the Applicant, will be at the meeting tonight.

Question 3:

Will biological specimens be received and handled at the proposed facility? If so, what are the specific methods to be employed in receiving and handling these materials?

Response 3:

No biological specimens will be received or handled at the facility.

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Question 4:

It is our understanding that the building will also house an upstairs apartment. What precautions will be in place to prevent human contact between the occupants and their visitors and the cats and materials previously mentioned?

Response 4:

The upstairs of the shelter has been utilized as an apartment for many years. Two private entrances exist for access to the apartment, one fire escape on the north side of the facility and a private entrance located in the front of the building. Both entrances will prevent any contact with the cats. Entrance through the interior of the building to the 2nd floor apartment is by way of a foyer and stairway, which is separated from the first floor proposed cat shelter.

Please note that there will never be any hazardous materials, medical waste, biological specimens or any other materials at the facility for either an occupant or a visitor to be exposed to. Again, cat waste and medical will not be entered into the onsite septic system.

I believe that my client's responses set forth in this letter clearly indicate that at no time does my client have any intentions of disposing of animal waste or medical waste (even though the medical waste is limited to needles) in and/or through the onsite septic system, which services the property.

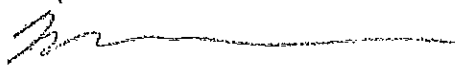
Furthermore, it is important to note that my client has operated a cat shelter on the property located at 305 Redemption Rock Trail, Sterling, Massachusetts, the site of the NEADS dog program for 24 years. Their operation at that site is under the same process and procedure, which is proposed for the new location at the above referenced property.

I believe that we have presented a comprehensive analysis and explanation of the issues and concerns generated by the Board of Health on such short notice, within hours prior to this evenings scheduled hearing.

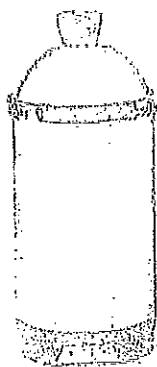
The Sarkisians and I will be available tonight for presentation and questions, which either Boards may have relative to these matters.

Thank you for your consideration of this matter.

Very truly yours,


Wayne M. LeBlanc

WML/dc
Enclosures



Medical Innovations, Inc.
introduces.....

On-Site Medical Waste Destruction

The logical alternative to the medical waste carrier!

- Converts all regulated medical waste to non-regulated waste. The processed waste can be thrown out with ordinary trash.
- Cuts costs. Savings range up to 90% per year. Replaces licensed haulers, mail-back services and sharps containers, and eliminates in-office record keeping costs.
- Improves infection control in the office. Instead of being stored in the office for weeks or even months, dangerous waste may be destroyed instantly.
- Reduces the threat of costly ongoing liability. Only by on-site destruction can the practitioner gain control over the liability that is imposed from both common law precedents and the cradle-to-grave liability that prevails in most states' regulations.
- Makes an important environmental contribution. Waste going to the landfill is not only reduced in volume by an average of 75%, but is sterile as well.

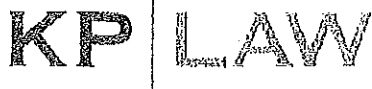
Here's how it works: The regulated medical waste is dropped into the metal transporter. When filled, several disposable disks, which are made of a special high temperature plastic, are put on top of the waste. The transporter is then inserted into the unit for a processing cycle during which the waste is sterilized and rendered both non-reusable and non-recognizable. The plastic disks are capable of melting only when temperatures that are well in excess of sterilization levels have been reached, so that when they melt down around and through the waste, they serve as a bio-physical indicator that sterilization has, in fact, occurred. The final result is a rock-hard amorphous black plastic block, about one-quarter the size of the original volume, which can be discarded as non-regulated waste.

Special Features:

- Developed to provide each of your treatment rooms with its own regulated medical waste collection device.
- Designed with a clear "safety" chute that protects the user's hand from discarded waste.
- The top cap locks onto the metal canister with a set screw. This prevents unauthorized or accidental removal of the waste, assuring the safety of your employees and patients.



Medical Innovations, Inc
1590 Concord Street
Framingham, MA 01701 USA
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The Leader in Public Sector Law

September 13, 2016

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Carolyn M. Murray
cmurray@k-plaw.com

EXHIBIT C

BY FACSIMILE AND ELECTRONIC MAIL
(dmetcalf@sterling-ma.gov)

William Bird, Chairman
Zoning Board of Appeals
Sterling Municipal Building
One Park Street
Sterling, MA 01564

RE: Cider Hill Estates
Status of Portion of Redstone Place

Dear Members of the Zoning Board of Appeals:

You have requested an opinion regarding the status of a portion of Redstone Place as it relates to an application filed by Sterling Real Estate Development, Inc. (the "Developer") to amend a special permit issued by the Zoning Board of Appeals (the "Board") on April 16, 2014, to allow an additional twelve units of multi-family dwellings to be constructed on 4.23 acres of land off Redstone Hill Road as shown on Assessors' Map 91, Lot 30 (the "Site"). The Developer proposes to combine the 4.23 acre parcel with the previously approved special permit, which allowed the construction of 21 two-family dwellings (42 units), on a larger parcel of land also off Redstone Hill Road, as shown on Assessors' Map 91, Lot 53 ("Lot 53"). If approved, the amended special permit would reduce the number of units to be constructed on Lot 53 to 16 two-family dwellings and add twelve two-family dwellings on the Site, for a combined total of 44 two-family units.

The question central to this proposed development is the legal status of a portion of Redstone Place, also referred to as the "old road," where Lots 53 and the Site abut the old road, and specifically, whether that portion is still a Town way or whether the Town relinquished its legal interests in the old road such that this portion is now a private way. As more fully explained herein, it is my opinion that the portion of the old road is no longer a Town way but is a private way, owned to the centerline by those owners of properties abutting the way, subject to any private easement rights that may exist.

Background

In order to construct this project as proposed, the Developer proposes to cross over a portion of Redstone Place, in an area where the Developer asserts the Town has relinquished all legal rights in the way, thus rendering this portion of the way private. The Developer also contends that G.L. c. 183, §58, the so-called Derelict Fee Statute (discussed further herein), applies to the private way

William Bird, Chairman

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such that the owners of land abutting along the way own to the centerline of the way. Further, the Developer has represented that, as the current owner of record of Lot 53 and as the anticipated purchaser of the Site (it is my understanding that the Site is currently owned by Sholan Homes, Inc. but is under agreement to be purchased by the Developer), the Developer will own two lots on opposite sides of the way, such that the Developer will own to the centerline of the way. As a result of this combined ownership in the way conferred by the two abutting lots, the Developer contends that Lot 53 and the Site effectively merge into one lot for purposes of zoning. In contrast, abutters or their representatives assert that the portion of Redstone Place is either still a Town way or that private easement rights may exist in the way such that the Derelict Fee Statute is not applicable and therefore the lots have not merged for purposes of zoning.

In order to respond to the question of whether this portion of Redstone Place is a Town way or a private way, I have reviewed the following materials:

1. Cider Hill Estates Modified Site Development Plan off Redstone Hill Road, dated January 25, 2016 with revisions through April 1, 2016;
2. Document entitled "Record of a Town Road Accepted Nov. 5, 1794" with physical description of the metes and bounds of the way laid out by the Board of Selectmen on October 14, 1794;
3. June 9, 2016 memorandum from the Town Clerk to the Chairman of the Zoning Board of Appeals attaching the following records of Town Meeting and the Board of Selectmen regarding Redstone Place:
 - a. February 14, 1949 Town Meeting 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"; and
 - b. February 15, 1958 Town Meeting vote "to abandon the old road from the residence of Duncan Rice to Redstone Place;"
4. June 29, 2016 memorandum from the Chairman of the Planning Board to the Zoning Board of Appeals regarding the Status of Road - Lot 30 Redstone Place with minutes of July 31, 2013 Planning Board meeting attached thereto;
5. July 12, 2016 letter from McNamara & Associates to Zoning Board of Appeals regarding Cider Hill Estates/Redstone Place;
6. August 3, 2016 letter from Attorney Todd Brodeur of Fletcher Tilton, on behalf of the Developer, to Zoning Board of Appeals with attachments;
7. August 4, 2016 letter from Nelson & O'Connell Title Company, Inc. to Attorney Todd Brodeur regarding Redstone Place;
8. Deed from Mildred Nelson, Administrator of the Estate of Bernard Nelson otherwise known as Bernhard Neilson, to Henry and Mary Moon dated January 13, 1949 conveying a farm consisting of four adjoining parcels, which were formerly a single parcel and comprise the parcels conveyed by Marie Lavoie to Bernard Neilson by deed dated September 21, 1911, excepting four conveyances of parcels to Leo Nelson, Terry Nelson, Joseph LaPlante and to the Town of Sterling, with such conveyances "subject to such rights as may have been granted by said

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- Neilson to the New England Power Construction Co....to establish and operate lines for the transmission of electric current...";
9. Quitclaim deed dated September 1, 2004 from Henry and Mary Moon to Sholan Homes, Inc. conveying 4.23 acres of land off Redstone Place as shown on a plan entitled "Land in Sterling surveyed for Bernhard Nelson Estate, dated December 1948"; and
 10. Quitclaim deed dated May 24, 2002 from James E. Simpson Excavating Co., Inc. to Sterling Real Estate Development, Inc. conveying a parcel of land on the southerly side of Redstone Hill Road containing 20.285 acres of land and known as 23 Redstone Hill Road and Outlot B described in Exhibit A attached, "subject to and together with any rights of way as shown on said plan that may be in force and effect."

It should be noted that I have not conducted a full title search of all of the properties abutting along the portion of the old road in question, nor have I been provided with a copy of a full title search of the relevant properties, so this opinion is confined to and based solely upon the aforementioned documents and the applicable statutes and case law. In addition, it is my understanding that there is no dispute as to the boundaries or extent of the portion of the old road that was discontinued or abandoned; rather, the dispute is limited to whether this portion remains a Town or public way or is a private way. For the reasons stated herein, it is my opinion that the portion of the old road is no longer a Town way but is a private way, owned to the centerline by those owners of properties abutting the way, subject to any private easement rights that may exist.

Town Meeting Vote Relinquished Any Legal Rights in Way

There are two statutes governing the discontinuance and abandonment of a road, G.L. c. 82, Sec. 21 and Sec. 32A, respectively. G.L. c. 82, Sec. 21 provides:

The selectmen or road commissioners of a town...may lay out, relocate or alter town ways, for the use of the town...and private ways for the use of one or more of the inhabitants thereof; or they may order specific repairs to be made upon such ways; and a town, at a meeting....may discontinue a town way or a private way. (Emphasis added.)

G.L. c. 82, Sec. 32A states in part:

The board or officers of a city or town having charge of a public way may, after holding a public hearing, notice of which shall be sent by registered mail, return receipt requested, to all property owners abutting an affected road and notice of which shall be published in a newspaper....upon finding that a city or town way has become abandoned and unused for ordinary travel, shall declare that the city or town shall no longer be bound to keep such way or public way in repair and upon filing of such declaration with the city or town clerk such declaration shall take effect, provided that sufficient notice to warn the public that the way is no longer maintained is posted at both ends of such way or public way, or portions thereof.

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Accordingly, the means by which a town takes or relinquishes a legal interest in a town way is by a vote of Town Meeting. See G.L. c. 82, Secs. 21 and 23. In contrast, the decision by a town to cease maintaining a way is made by the board of selectmen or other officers in charge of public ways. See G.L. c. 82, Sec. 32A. The record before us suggests that there may have been a point when the Board of Selectmen considered abandoning the maintenance of the old road, as the February 1921 Town Meeting decided to leave "in the hands of the Selectmen" the issue of "discontinuing the highway from the house of Bernard Nelson to the house of William H. Burpee." The Town Clerk's research on this Town Meeting article notes that Mrs. Violet Nelson Shephardson remembered Charles Patten putting up a sign beyond her father's house stating "Road Closed" which would be an indication that the Board of Selectmen voted to cease maintaining the road pursuant to G.L. c. 82, Sec. 32A. However, the Town Clerk could not find any record of any related action in the minutes of the Board of Selectmen from 1921.

Subsequently, Town Meeting did take action with regard to this road when, in February 1949, Town Meeting voted to "open the Old Road from Maple Street to Nelson Road" and again in February 1958 when Town Meeting voted "to abandon the old road from the residence of Duncan Rice to Redstone Place." This vote in 1958 appears to be the last Town Meeting action taken on the old road. Although the Town Meeting vote of 1958 used the term "abandon," which is the term associated with a town abandoning its obligations to maintain a road, as noted above, Town Meeting is not the proper body to vote to abandon maintenance of a road. Rather, the board of selectmen or other officers in charge of public ways follow a different process outlined in G.L. c. 82, Sec. 32A when such board decides that the town no longer wishes to maintain a way in good repair for public travel, and that process does not include a vote of Town Meeting.

Because Town Meeting, and not the Board of Selectmen, voted to "abandon" the old road, it is my opinion that this vote actually reflects Town Meeting's decision to discontinue the old road pursuant to G.L. c. 82, Sec. 21, that is, to change the status of the old road from a Town way to a private way. Accordingly, it is my opinion that the use of the word "abandon" by Town Meeting is not dispositive of the action taken. Instead, the vote of Town Meeting must be given its actual meaning within the context of Town Meeting's statutory authority, and in this context, Town Meeting's vote affected a discontinuance of the old road, meaning the Town voted to relinquish its legal rights in the old road. See Coombs v. Selectmen of Deerfield, 26 Mass.App.Ct. 379, 381 (1988).

Application of the Derelict Fee Statute

Having reached the conclusion that the Town relinquished its legal rights in this portion of the old road, the question turns to the ownership of this private way. G.L. c. 183, Sec 58 provides:

Every instrument passing title to real estate abutting a way, whether public or private...shall be construed to include any fee interest of the grantor in such way...unless (a) the grantor

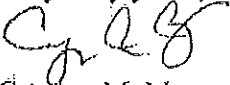
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retains other real estate abutting such way...in which case (i) if the retained real estate is on the same side, the division line between the land granted and the land retained shall be continued into such way...or (ii) if the retained real estate is on the other side of such way...the title conveyed shall be to the centerline of such way...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.

As stated above, I have not conducted a full title search of Lot 53 and the Site, nor have I been provided with a full title search of these parcels. However, the instruments provided reflect no exceptions or reservations by the grantor in any of the ways referenced in the deeds or shown on the accompanying plans. I also note that the instruments provided for the 4.23 acre parcel, now known as the Site (that is, Lot 30), date back to 1911, when Bernard Nelson acquired much of the land in question from a single grantor, contain only four express exceptions for parcels conveyed to four other entities and subject any rights in the land conveyed to a perpetual easement granted to New England Power Construction Co. for electric transmission lines, towers and poles. In fact, the deed from Mildred Nelson to Henry and Mary Moon describes the Site as bounding, in certain points, "in the line of said Nelson Road" or "by said line of said Nelson Road," (also referred to as Nelson Place) which appears to be in the vicinity of, if not the same as, the portion of Redstone Place or the "old road" in question.

Finally, I note that I have not been presented with any evidence of any private rights in the old road, nor do any of the instruments that I have reviewed refer to any such private rights or easements, other than the one easement to the New England Power Construction Co. However, to the extent that any private rights existed to access the old road, a vote of Town Meeting to discontinue the old road would not terminate such private rights. There being no other evidence presented of any further exceptions, reservations, or private rights in the way, it is my opinion that the derelict fee statute applies, and the owners of property abutting along the private portion of the old road own to the centerline of the private way. See Wright v. Walcott, 238 Mass. 432, 436 (1921). See also Nylander v. Potter, 423 Mass. 158, 161 (1996).

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Carolyn M. Murray

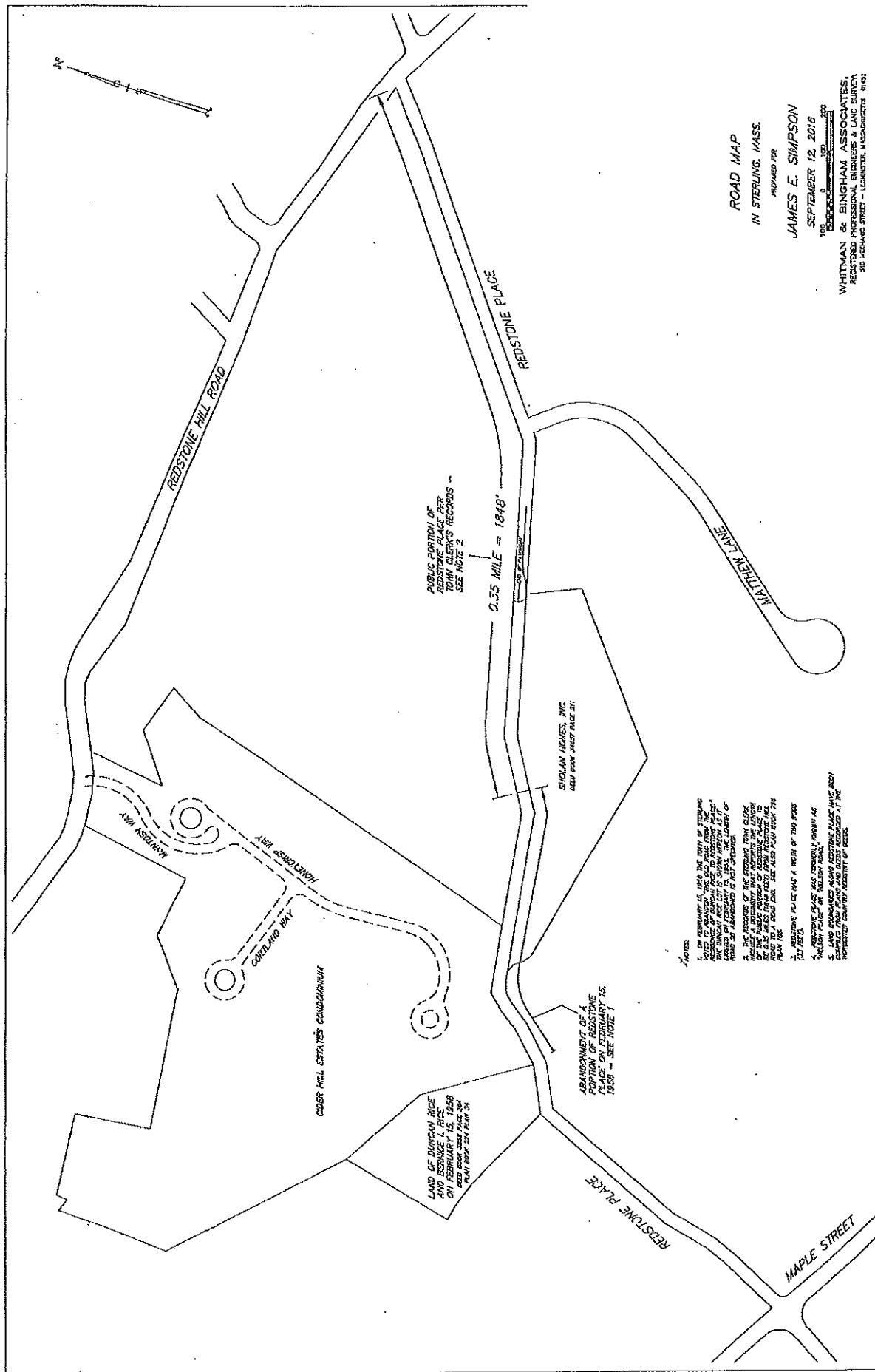
CMM/man

cc: Board of Selectmen

Town Administrator (by electronic mail to mszlosek@sterling-ma.gov)

563570/STRI/0001

EXHIBIT D



Recap of some facts regarding the Simpson permit amendment

- Applicant received the EXISTING SPECIAL PERMIT based on reviews and approvals by various boards of plans he submitted
- Applicant made a unilateral business decision to not follow those plans so as to maximize his profit.
- The nonconformance with the plans was significant; the development is fully built out relative to the total number of bedrooms provided, maxing out the septic systems.
- The applicant's amendment is critically based on the fact that the existing development did not follow the approved plans.
- The applicant therefore is currently not conforming to the implicit and/or explicit terms of the existing permit and permit process, expressly for the purpose of maximizing his profit.

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- The ZBA in the hearings for the existing permit agreed to include the following restrictive wording in the Special Permit:
"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."
 - Despite recent statements, by the applicant and repeated by some board members, regarding access only to the paved portions of Redstone Place, the wording is clear: it applies to any form of access and to the unpaved portion, particularly since the existing development had no way to get to the paved portions without crossing the property of others.
 - Apparently an error was made in the existing permit: the restrictive wording somehow was not in the issued permit.
 - The applicant at numerous hearings for the existing permit stated that Redstone Place "will not be touched at all."
 - The current permit amendment depends on the Board ignoring the prior statements and agreements made regarding access to Redstone Place.

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- The new parcel on which this new development is proposed is smaller than the minimum size parcel in the bylaw.
 - The density of development on this new parcel is more than three times that in the existing development.
 - The parcel on which the new development is proposed will not have the open space required in the parcel by the bylaw.
 - The new development does not meet the bylaw road or driveway minimum separation requirement wording "shall be separated from all other driveways .. by at least 150 feet." since it is less than 80 feet from my driveway.
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- Relative to statements by the board at hearings for this permit amendment that "no one likes change", that may be true for some folks but the facts are that I supported/ did not vehemently contest the existing development on the original 20 acre parcel expecting that the board and the developer would hold true to their commitments regarding access to Redstone Place.

Additionally, I am on record as supporting the previous single family homes proposal for this particular parcel, recognizing that the neighborhood is a single family homes neighborhood.

No one likes the wrong kind of change.

In conclusion:

- It seems to me that further rewarding the applicant for his nonconformance to the implicit/explicit terms of the current permit relative to the approved plans by granting a permit amendment that hinges on his nonconformance would be unjust and undermining to the permit process.
- 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 of Sterling and of the neighborhood.

Gregory Fynan
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Sterling, MA
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EXHIBIT F

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Sterling ZBA - Redstone Hill Road Special Permit

Mr. Curtin,

At last week's Sterling Zoning Board of Appeals ("ZBA") meeting, a question was raised by a resident regarding the application to amend the special permit previously issued to Sterling Real Estate Development, Inc. relative to property located off Redstone Hill Road. Specifically, the resident questioned whether the application should be treated as a new special permit, as opposed to an amendment to the existing special permit, in part because the applicant seeks to add a parcel(s) of land not part of the original special permit. In response to this question, I verbally opined at the ZBA hearing that the applicable statutes, G.L. c. 40A, §§9 and 11, make no distinction between a special permit and an amendment to a special permit, and therefore, there is no distinction in the process to issue a new special permit or to amend an existing special permit, as both would require a legal advertisement, notice to abutters, a public hearing, and a decision. However, I also stated at the ZBA hearing that I would like to review the materials for the original special permit and for the proposed amendment to ensure that the application was properly before the ZBA. For the reasons stated herein, it is my opinion that the application to amend the existing special permit is properly before the ZBA.

I have had an opportunity to review the original special permit decision and the advertisement and notice for the amended special permit. I note that the original special permit was issued to Sterling Real Estate Development, Inc. for property "situated on the southerly side of Redstone Hill Road known as number 43 Redstone Hill Road...shown in the Assessor Map Plan Book as Map #91, Lot #53." The Town has a standard form for requesting a modification of a permit or variance, which the applicant completed and which was on file for the public to view. Although the ZBA has an application to amend an existing permit, I note that, like the statute, there is no distinction made in the Town of Sterling Protective Bylaws between an original special permit or an amendment to a special permit. In addition, the legal notice for the amendment identifies the applicant as Sterling R.E. Dev. Co./Sholan Homes, Inc. seeking "an amendment to a previously approved Special Permit for purposes of adding 12 units of multifamily dwellings resulting in a net gain of 2 units at property located at Redstone Hill Road, Sterling, MA shown in the Assessor Map Plan Book as Map #91, Lot No. 30/53." In my opinion, the legal notice for the original special permit and the legal notice and application for an amended special permit adequately notified the public as to the property at issue and the relief sought. Further, the notice for the proposed amendment encompassed the same property that was the site of the original special permit (Map #91, Lot 53), as well as the new parcel, Plan #91, Lot 30, and therefore, notices to abutters and abutters to abutters would be based on both lots, ensuring that all parties in interest were notified.

There being no distinction under G.L. C. 40A or under the Town's Protective Bylaws relative to the treatment of an amendment to a special permit, it is my opinion that an amendment to an existing special permit be handled in the same manner as an original special permit, which appears to be the case here. It is my further opinion that the application for an amendment to an existing special permit is properly before the ZBA.

If you have any further questions, please contact me.

Thank you,

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