

**ROXBURY ZONING COMMISSION
ROXBURY, CONNECTICUT 06783**

**Regular Meeting
Monday, December 8, 2008**

MINUTES

Members Present: Robert Falconer, Toby Goldfarb, Gary Coburn, James Conway and Elaine Urban

Alternates Present: William Weed, Mary Elizabeth Peck and Stewart Kellerman

Others Present: Mrs. Holroyd, Atty. Beckert, Mr. Lasky, Atty. Murta and Mr. Sherman

Call to Order: Chairman Falconer called the meeting to order at 7:30 p.m.

Seating of Members: Members Falconer, Goldfarb, Coburn, Conway, and Kellerman for Urban were seated.

Approval of Minutes:

MOTION to approve the minutes of the meeting of November 10, 2008 as amended:

Page 2, para. 11, last sentence – change to 8.6.7

Page 3, para. 6, sentence 5 – add Mr. Cicarelli's comments follow: The road was bad.

Page 4, para. 1, last sentence – change to registered

Page 4, para. 7, last sentence – change He to Mr. Kelly pointed out that.

MOTION by Gary Coburn seconded by Stewart Kellerman and carried 3-0 with Toby Goldfarb and James Conway abstaining.

Chairman Falconer requested that Mr. Kellerman step down and Mrs. Urban was seated.

Whitney/Hurley – 134 Squire Road – Stump removal, excavation and regrading

Mr. Hurley explained that he has been restoring his 100-year old barn to its original state. He showed several photographs and gave a brief description of his plan to remove a large stump near the corner of the barn and redistribute the excavated materials to another part of his property. Mr. Falconer confirmed that no material would be taken off the site and commented that Zoning would have no concerns regarding this project. Mr. Kellerman questioned the impact on wetlands and Mr. Hurley noted that the deposited materials would be at least 600' from the stream. It was noted that Mr. Pierpont advised Mr. Hurly to discuss his plan with the Commission before filing an application, because a large amount of material would be redistributed on the site.

Lasky/88 Mallory Road – Home Enterprise complaint

Tom Murta explained that he represented Mr. Lasky. He confirmed that Mr. Falconer suggested that the statement of use that was submitted with Mr. Lasky's special permit application needed to be more detailed. The Commission would like the statement of use to include details such as the scope of the operation, hours of the operations, number of vehicles, days of operation, number of employees, list of equipment, size of vehicles, the square footage devoted to indoor and outdoor storage and the whole home enterprise.

Mr. Kellerman questioned whether the vehicles would be considered outdoor storage (Section 8.8.6). Mr. Falconer felt that a storage area would be enclosed and would not include parked vehicles. Mr. Murta explained that the vehicles are based on the site, not stored there, and they go out to job sites each day.

Mr. Falconer explained that the home enterprises that have no impact on the neighborhood such as a computer business do not require a zoning permit. However, the more the business impacts the neighborhood, the greater the number of regulations that have to be met. At a certain threshold, it may be that the business is too big for a residential neighborhood. Mr. Falconer told Mr. Murta that he expected a plan that would scale back the current operation and detail what parts of the business they wanted to continue.

Mr. Murta commented that he was not aware that the Commission felt the business was too big and asked what was expected. Mr. Falconer explained that the Commission wanted a proposal from the applicant that they could discuss and determine if it would work. Mr. Kellerman added that the impact on the neighborhood should be an important consideration.

Mr. Murta explained that there has been no repeat of the day that Mr. Lasky's trucks went back and forth 7 times and he has kept the tri-axle truck off the property. Mr. Murta questioned whether that was scaling back enough or would more be expected.

The Commission discussed its site visits to Mr. Lasky's property. Mr. Goldfarb noted that he had visited the site prior to the last meeting and did not see a lot of traffic or notice a lot of noise. He noted the equipment is very large and not typical farm equipment. He continued that objection is not really the size of the equipment, but the use, the noise and the frequency. Another issue is the impact of the equipment on Mallory Road.

Mr. Murta thought they might propose that no more than four vehicles would go in and out once per day. He noted that all the trucks are not used every day. The excavators are usually out at job sites.

Mr. Kellerman and Ms. Peck said they visited the site at about 2:00 p.m. and found that nothing was happening at that hour. Ms. Peck thought that the site had been cleaned up. They found no employee cars parked on the site.

Mr. Lasky confirmed that he currently has three employees in addition to himself.

Mr. Falconer asked if the trucks are screened from the neighbors. Mr. Murta said that only the barn might be visible from the second floor of the neighbor's house. Mr. Lasky noted that his workshop is 700' from the nearest neighbor.

Mr. Coburn noted that Section 8.8.7 of the regulations restricts the size of outdoor storage items to a height of 10'. He questioned whether the trucks and equipment would fall under this regulation. Mr. Lasky noted that the equipment is not left on the trailers and therefore, would not exceed 10'. Mr. Goldfarb reiterated that outdoor storage was not meant to include vehicles.

Mr. Falconer emphasized that when developing the statement of use, it should be kept in mind that the Commission is swayed greatly by how the neighbors feel about the impact of this business on their neighborhood. He asked that they consider whether they are being "good neighbors".

Mr. Kellerman reminded that the neighbors (who spoke at the last meeting) were not interested in putting Mr. Lasky out of business. According the Mr. Murta one neighbor has told them his goal is to put Mr. Lasky out of business and their attorney will not return his calls. Mr. Lasky feels confident that an agreement can be worked out with all the other neighbors.

Mr. Kellerman said it would make a difference to the Commission if neighbors felt that the business was suitable to the area. Mr. Lasky asked Mr. Sherman if he felt that recently it has been quieter. Mr. Sherman said the activity had been moderated. Mr. Falconer felt that clear guidelines governing the business should be established so that complaints don't continue to arise in the future. He also commented that it is the job of the Zoning Commission to insure the peace and quiet of this town and while we wish Mr. Lasky success, we can't allow his business to make life unpleasant for the neighbors.

Mr. Kellerman questioned whether Section 18.19.1, an after-the-fact permit fee would apply. Mr. Goldfarb felt that an after-the-fact fee was meant for someone who builds a structure and then realizes a permit is needed. Mr. Falconer reminded that Mr. Lasky did admit to bringing in 7 truckloads of fill. Mr. Goldfarb noted that Mr. Lasky did obtain a permit for his workshop. Mr. Murta indicated that they are not applying for a permit for the fill. Mr. Goldfarb felt that this is a new application for a new activity and this it is not what the after-the-fact fee was meant for. Mr. Conway commented that they wouldn't be here if they had applied for a permit before the neighbors questioned it.

Mr. Murta noted that there was a permit in place, which the Commission feels was expanded. Mr. Falconer reminded that the permit was for outdoor storage for a landscaping business. Mr. Conway felt that it would be a new permit for an expanded business but it is somewhat after the fact. Members agreed that the issue was not the fee. Chairman Falconer agreed to consult the town attorney about the matter.

Mr. Falconer reiterated that the Commission must have a detailed statement of use, which they had hoped to receive at this meeting, so a public hearing could be scheduled. He noted that the neighbors were told that a public hearing would be scheduled for next meeting. Mr. Falconer wondered if they could submit a statement of use by the end of meeting. Mr. Murta felt the earliest they could have it would be the next day. Mr. Falconer explained that the Commission would have to meet again to accept the application.

It was the consensus of the Commission that the application they received was incomplete. Mr. Murta agreed to withdraw the application and resubmit it next month and to notify the neighbors regarding the delay.

The Commission also agreed that a complete application could be accepted at the January meeting and a public hearing could be scheduled for the February meeting. Mr. Murta and Mr. Lasky volunteered to notify the neighbors of this schedule.

Mrs. Urban noted that Mr. Lasky has actively scaled back his business activity in this interim period. Mr. Lasky invited Zoning members to visit his property without notice.

Mr. Murta thanked the Commission and asked that the Commission hold the permit fee.

High Meadow Riding Club

Mr. Goldfarb asked to be recused and Mr. Weed was seated.

William Beckert of Bristol introduced himself as Attorney for the High Meadow Riding Club. He informed the Commission that his office had received a phone call this afternoon from Attorney McTaggart regarding an objection by a neighbor regarding a 60-day notice requirement. Mr. Beckert referred to a letter his client received in December 2005 from Attorney McTaggart that said that the previous notices would be sufficient with respect to any development on the Meadow. It was Attorney Beckert's understanding that Attorney McTaggart had received a letter (this date) from Mr. Goldfarb's attorney expressing reservations with regard to her opinion about the notice requirement.

Mr. Falconer discussed a memo he received from Attorney McTaggart in which she opined that the 60-day notice is a valid concern and she felt that compliance could head off further legal action. Mr. Beckert read the memo and reiterated that the previous letter from Attorney McTaggart contradicted this opinion.

Mr. Beckert felt that in order to remove any potential for appeal, it would be in the best interest of his clients to withdraw their application. He explained that all his clients intend to do is to construct an exercise ring for horses on the "Meadow". They have no intention of constructing any out buildings, barns, or other structures. Mr. Falconer asked if there would be any businesses conducted on the Meadow. Mr. Beckert responded that they had no intention to use the meadow for any commercial purpose at this time. Mr. Beckert offered to forward a copy of the 2005 letter from Attorney McTaggart.

Mr. Beckert expressed frustration with the challenge regarding notice received this evening because he felt it contradicted the previous opinion by the town attorney. Mr. Falconer asked to see a copy of that opinion letter. Mr. Beckert reiterated that they intend to withdraw the application and reapply. Mr. Falconer requested they notify the neighbors about the delay. He also asked that the new application include a detailed statement of use, as the one sentence provided in the current application was not sufficient. It should also include a statement that no commercial business will be conducted on the meadow. Mr. Beckert asked that the Commission hold their permit fee. He noted that Attorney McTaggart has assured them that withdrawing their application would not have an adverse affect on the Commission's decision or create an issue regarding the timeliness of the application. Mr. Falconer agreed that Commission also wants to eliminate any possible problems.

Mr. Coburn wondered if the Commission should request a letter of intent that High Meadow Riding Club would be reapplying within a certain amount of time. Mr. Falconer did not feel that would be necessary.

It was noted that meeting dates for 2009 would be decided later in this meeting and the schedule would be forwarded to Mr. Beckert.

Mr. Kellerman asked that more information be provided regarding the surface materials used on the riding ring. Mr. Beckert agreed to bring an engineer to the meeting to address questions.

Mr. Falconer asked if friends of the High Meadow Riding Club would be using the ring. If so, where would their horse trailers be parked?

The after the fact permit was discussed. Mr. Falconer felt that it should not be enforced for one application and not the other.

In consideration of the 60-day notice requirement, Mr. Beckert asked that the deadline for the new application be the March 2009 meeting. The Commission agreed to that date.

Mrs. Urban reiterated that the applicants had no intention of building a barn on the "Meadow".

Mr. Beckert noted that after 2+ years his clients want to be able to ride in the ring. He agreed to get a detailed statement of use, which would address guests and parking of trailers, lighting, riding lessons and details of all proposed uses.

Building Lot Requirements – Tabled.

Utility Cabinets

The Commission discussed whether zoning permits can be required for utility cabinets and meters. Mr. Falconer referred to an article in the P& Z Newsletter, which discussed VRAM boxes. The article noted that the State Department of Public Utility Control (DPUC) has ruled that before these boxes can be installed, AT&T must seek the approval of the property owner as well as the municipality. Chairman Falconer agreed to speak to the town attorney regarding this matter. The Commission asked that Mr. Pierpont take photographs around Roxbury of these structures. An unsightly utility cabinet at 24 Painter Ridge was discussed.

ZEO Report – Report was noted.

2009 Zoning Calendar

The proposed schedule of Zoning Commission meeting dates for 2009 was discussed.

MOTION: To approve the Zoning meeting calendar for 2009 with the following dates: Jan. 12, Feb. 9, March 9, April 13, May 11, June 8, July 13, Aug. 10, Sept. 14, Oct. 13, Nov. 9 and Dec. 7, 2009. By Toby Goldfarb, seconded by Gary Coburn and unanimously approved.

2009 Appointment of Chairman and Vice Chairman

MOTION: To nominate Robert Falconer as Chairman of the Zoning Commission for 2009. By James Conway, seconded by Toby Goldfarb.

MOTION: To close nominations. By James Conway, seconded by Toby Goldfarb and carried unanimously. The vote to appoint Robert Falconer was unanimous.

MOTION: To nominate James Conway as Vice Chairman of the Zoning Commission for 2009. By Elaine Urban, seconded by Gary Coburn.

MOTION: To close nominations. By Toby Goldfarb, seconded by Robert Falconer and carried unanimously. The vote to appoint James Conway was unanimous.

Chairman Falconer thanked James Pierpont for his many years of service to the town as Zoning Enforcement Officer. He said the Zoning Commission appreciated the work Jim has done over the years.

Communication

Mr. Weed asked if there was a job description for the Zoning Enforcement Officer. It was noted that the Board of Selectman is responsible for hiring for this position.

Eliminated about a year ago, Mr. Goldfarb suggested that the Commission reinstate the section of the Zoning regulations that requires the (annual) reappointment of the Zoning Enforcement Office. He felt it might be appropriate to establish a term for the Zoning Enforcement Officer. Mr. Goldfarb asked that Mrs. Eddy retrieve the previous regulation so that the Commission could

discuss reinstating it at its next meeting. Mr. Falconer noted he had spoken to the First Selectman about his desire to interview ZEO candidates.

Mr. Kellerman suggested that the Wetlands and Zoning Enforcement Officer positions might be combined. Mr. Falconer commented that he and Mr. Dirienzo had no objection to one person performing both jobs, but they could not be combined because two separate commissions are involved.

As suggested, Chairman Falconer will notify Barbara Henry and Russ Dirienzo that the Zoning Commission would be developing a ZEO job description. He noted that the ZEO job description would eventually be incorporated into the Zoning Regulations.

Mr. Goldfarb noted that this sort of administrative amendments to the zoning regulations did not require a public hearing. Mr. Falconer would confirm that with the town attorney.

Mr. Goldfarb, on behalf of the Commission, thanked Mrs. Eddy for her “tireless and accurate work” throughout the year.

Chairman Falconer wished all a “Merry Christmas”.

MOTION: To adjourn the meeting at 9:42 p.m. Motion by Toby Goldfarb and seconded by Elaine Urban. Motion approved unanimously.

Respectfully submitted,

Karen Eddy
Land Use Administrator

Cc: B. Henry, P. Hurlbut, R. Dirienzo, R. Lowe, J. Pierpont, R. Falconer, R. Munson,
G. Steinman, G. McTaggart

These minutes are not considered official until approved by the Roxbury Zoning Commission