

**ROXBURY INLAND WETLANDS COMMISSION**  
**MINUTES**  
**Regular Meeting**  
**July 28, 2009**

Members Present: Mr. Dirienzo, Ms. Napier, Mr. Ketchum and Ms. O’Conner

Alternates Present: Mr. Smoliga and Ms. Fitch

Others Present: Mr. Kellerman, Mr. Neff, Mr. DiVesta, Ms. Steers, Mr. Moeller, Ms. Hennessey, Kathy Castagnetta and Tammy McVey-Camilleri of Voices

Mr. Dirienzo called the meeting to order at 7:30 P.M.

**SEATING OF MEMBERS**

Chairman Dirienzo seated members Napier, Ketchum, O’Conner, Dirienzo and Fitch for Horrigan.

**CONSIDERATION OF MINUTES**

The approval of minutes from the Regular Meeting of June 23, 2009

MOTION: To approve the minutes of the June 23, 2009 Regular Meeting. By Ms. Napier, seconded by Ms. Fitch and passed 4-0. Mr. Ketchum abstained.

The approval of minutes from the Special Meeting of June 24, 2009

MOTION: To approve the minutes of the June 24, 2009 Special Meeting. By Ms. Napier, seconded by Ms. Fitch and passed 3-0. Ketchum and Dirienzo abstained.

**WEO REPORT**

Mr. Dirienzo explained that they received a call regarding tree cutting, which was responded to by Mr. Kellerman. Mr. Dirienzo reported that he spoke with the property owner who explained he was cutting mostly brush and confirmed that there would be no more clearing performed.

**COMMUNICATIONS**

Voices article dated July 8, 2009

Mr. Dirienzo confirmed the Commission’s receipt of the Voices article dated July 8, 2009.

**OLD BUSINESS**

Roxbury Land Trust (Tierney Preserve) – Install log structures along Jack’s Brook- (Report on Special Site Meeting June 24, 2009)

Ms. Napier, Ms. O’Conner, Ms. Fitch and Mr. Smoliga were present for the site walk. The report regarding this site walk is reflected in the minutes of the 6/24/09 Special Meeting. Ms. Napier noted that she was impressed with the plan.

Julie Steers confirmed that they would begin by making one structure. The Commission can then inspect and decide whether they should move forward. She explained that funding is not available to be released this year. They plan to start next year when funding becomes available.

MOTION: To approve the application of Roxbury Land Trust (Tierney Preserve) – Install log structures along Jack’s Brook as a regulated activity. By Ms. Napier, seconded by Ms. O’Conner and passed 5-0.

Mr. Dirienzo asked that they notify the Land Use Department 5 days prior to beginning work.

MOTION: To waive the fee for the application of Roxbury Land Trust (Tierney Preserve) – Install log structures. By Mr. Dirienzo, seconded by Ms. Napier and passed 5-0.

Fulling/18 Falls Road – Brook restoration and driveway culvert replacement

Mr. Neff reviewed the plan to remove existing culvert and replace with a box culvert. He distributed a planting plan and confirmed that there would not be a lawn planted in the area. Mr. Dirienzo reported that he and Mr. Horrigan viewed the site. Mr. Horrigan's concern was that the drop created after the removal the dam would create a falls. Mr. Neff explained that the drop would be approximately 3 feet and it is in the plan to reslope the area after removing the dam to prevent an extreme drop. He noted it is their intentions to put the area back to its natural state.

MOTION: To approve the application of Fulling/18 Falls Road – Brook restoration and driveway culvert replacement as a regulated activity. By Mr. Dirienzo, seconded by Ms. Napier and passed 5-0.

**NEW BUSINESS**

Wiant/46 Southbury Road – Single-family dwelling

Kathy Castagnetta of Arthur H. Howland presented a plan entitled Overall Site Development Plan dated July 9, 2009. She described the plan for a single-family dwelling on the 45-acre parcel. Mr. Dirienzo explained that he discussed the plan with Paul Szymanski and suggested that the plan be revised to use either a 3 sided or 4-sided set in box culvert for the wetlands crossing.

The Commission requested that the map be revised to show wetland delineation lines and topography for the entire lot. Mr. Dirienzo questioned why a more direct driveway route to the house was not chosen; however, noted this choice may have something to do with the topography. Ms. Castagnetta confirmed that wetlands are flagged. The Commission asked to have the driveway flagged and stake the house corners prior to the site walk.

Mr. Dirienzo and Ms. Napier agreed to do the site walk and asked that Mr. Szmanski contact them when the revised map is ready and property is flagged.

Hennessey/115 Rucum Road – Rebuild single-family dwelling destroyed by fire

Mr. Neff explained that Ms. Hennessey needs to get back into the house by November. He noted that the house will be rebuilt on the same footings and it is outside the regulated area. The septic will need to be rebuilt to code and is within the regulated area. The Septic plan has been verbally approved by the Health Department. Mr. Neff confirmed that Woodbury has been notified due to the proximity of lot to the town line.

MOTION: To approve the application of Hennessey/115 Rucum Road – Rebuild single-family dwelling destroyed by fire as a maintenance activity and to waive fee. By Mr. Dirienzo, seconded by Ms. O'Conner and passed 5-0.

### Town of Roxbury/Ranney Hill Road – Cross Culvert Maintenance

Doug DiVesta presented a map entitled Cross Culvert Maintenance dated 7/22/09. He explained that the corrugated pipe within the twin 60-inch pipes has eroded causing a sinkhole. The plan is to replace this area with reinforced concrete pipe. 16 feet on each side will be replaced one at a time. The repair is proposed to take place in August.

MOTION: To approve the application of Town of Roxbury/Ranney Hill Road – Cross Culvert Maintenance as a regulated maintenance activity. By Mr. Dirienzo, seconded by Ms. O’Conner and passed 5-0.

### **COMPLAINTS/ENFORCEMENT**

#### McDonald / 6 Baker Road - Show Cause Hearing / Cease & Desist Order

Mr. Dirienzo reported that he spoke with Mr. McDonald and explained the importance of his presence at the meeting. He noted that he called his cell phone because he refuses his mail and there is no other way of contacting him. Mr. McDonald is in Florida. Mr. Dirienzo suggested that he send his legal representative. Henry Moeller of Soils Consulting Service was present on Mr. McDonald’s behalf.

Mr. Dirienzo read for the record the letter dated 6/25/09 from Mr. McDonald. He noted that the letter has no merit. Upon the advice of the Town Attorney he agreed to address the letter. Mr. Dirienzo noted that he and not the commission members interrupted Mr. Moeller with regard to his claim that this was a conservation action, which Mr. Moeller later corrected to a maintenance activity. Mr. Dirienzo discussed with Mr. Moeller the allegation of a threat to Mr. Moeller and agreed this was with regard the standard of ethics by which their profession is held. Mr. Dirienzo explained that although Mr. McDonald writes this is a committee of volunteers lacking in advanced training, the three members mentioned have completed courses in advanced training and he is considered an expert in the field. Mr. Dirienzo confirmed that a copy of the regulations were present at the 6/23/09 meeting as they are at every meeting, although Mr. McDonald writes to the contrary. He noted that the commission members did nothing wrong with regard to the 4/22/08 meeting and they were doing their job by questioning the existence of wetlands. Mr. Dirienzo explained that Mr. McDonald has no right to ask for the recusal of members. Nobody has the right to recuse another. Mr. Dirienzo commented that he takes offense that Mr. McDonald asks for the removal of these fine volunteer members when he has never volunteered for the Town of Roxbury. He noted that Mr. McDonald feels that anyone not agreeing with him should be removed. Ms. Napier commented on Mr. McDonald’s threatening behavior specifically when he stood up in a threatening way toward Ms. O’Conner and Mr. Dirienzo warned he would call the police if he did not resear himself.

Mr. Dirienzo agreed that the civil matter must have been frustrating for Mr. McDonald; however, he had other options other than crossing the wetlands with an excavator and digging a berm. Mr. Dirienzo read the State Regulations regarding maintenance activities that notes it shall not include removal of significant material. He explained that he could not find the use of the word “maintain” as “to defend” other than in the content of war. Legislative history of “maintenance” with regard such issues shows that it was not created for this purpose. Mr. Smoliga added that it is not up to the individual to determine if an activity is a maintenance activity. This is to be determined by the Commission.

Mr. Dirienzo reported that the erosion control agreed upon was not in place. He spoke with Mr. Hayden who advised to wait for the mitigation plan prior to enforcing the erosion control. Mr. Moeller noted that he was not advised to send Mr. Hayden a copy of the mitigation plan; therefore, he has not received one as agreed upon by Mr. McDonald. Mr. Moeller confirmed that the wetlands have not been flagged and that he was not instructed to do so by Mr. McDonald. The Commission noted that they could not determine whether the berm is within the 100-foot buffer without identifying and flagging the wetlands. Mr. Dirienzo noted that the Cease & Desist Order is a legal order, which Mr. McDonald needs to take seriously. He needs to cooperate with the Commission.

Mr. Moeller presented his assessment and mitigation plan. He explained that he has a BS in soils. He has a major in soil and minor in geology. He does not have a degree in hydrology or biology. The Commission reviewed Mr. Moeller's letter dated 7/27/09. Mr. Dirienzo suggested that they use wetland seed rather than his suggestion of rye. Mr. Moeller explained that the rye would do the job. Mr. Moeller explained that they would not be removing the logs because Mr. McDonald needs access to his property. The Commission asked if this is going to be a permanent crossing. Mr. Moeller explained that he is unsure what the long term plans are, but for the time being Mr. McDonald needs to keep an eye on his property. The Commission suggested that this could be done on foot. Mr. Moeller confirmed that they have already begun to move forward with the mitigation plan.

Mr. Dirienzo noted that the process is not to do anything without prior approval. He explained that the Commission needs a date for the removal of the logs and wetlands need to be flagged. The Commission agreed that what Mr. Moeller has provided is not a mitigation plan. It was agreed that it was obvious that Mr. McDonald does not want to cooperate.

**MOTION:** To refer the complaint / enforcement of McDonald / 6 Baker Road to the town attorney. The Cease & Desist Order is to remain in effect and a \$1,000 per day fine is to be imposed. All future communication should be between the town attorney and Mr. McDonald's attorney. By Mr. Dirienzo, seconded by Ms. Napier and passed 5-0.

Mr. Dirienzo apologized to the taxpayers of Roxbury. He explained that Mr. McDonald is playing games, wasting time and has no respect for the Commission. The Commission provided him with an opportunity to work with Sean Hayden of the Northwest Conservation District to move this forward. This is now a legal matter and will now be put to the courts to decide. He noted that he would ask the town attorney to put a lien against the property with regard to the fine.

Elmer Lewis & Sons Construction – Reassess fine (see letters dated 6/26/09 & 7/7/09)

Mr. Dirienzo reported that the contractor explained that they were not notified regarding the 6/23/09 meeting. However, the minutes reflect that Mr. McDonald stated that he assured them that he would be present at the 6/23 meeting and their presence was not required. In fairness they were told to come to this meeting to discuss and reassess the fine; however, a representative is not present.

MOTION: The fine of \$1000 to Elmer Lewis and Sons Construction for the violation of Wetland Regulations of the Town of Roxbury and State of Connecticut will stand. By Mr. Dirienzo, seconded by Ms. O'Conner and passed 5-0.

Mr. Dirienzo thanked Randy Ketchum for his 13 years of excellent service to the Commission. He noted that Mr. Ketchum has done a great job for the Commission and will be missed.

MOTION: To adjourn the meeting at 8:51 PM. By Mr. Dirienzo, seconded by Ms. Napier and passed 5-0.

By: *Tai Kern*

Tai Kern, Clerk

cc: B. Henry, R. Lowe, R. Dirienzo, P. Hurlbut, R. Falconer, M. Barton, R. Munson, G. McTaggart and H. Rawson.

Minutes are filed subject to approval by the Roxbury Inland Wetlands Commission.