

MINUTES
Regular Meeting
June 23, 2009

Members Present: Mr. Dirienzo, Ms. Napier, Mr. Horrigan and Ms. O'Conner

Alternates Present: Mr. Smoliga, Ms. Fitch

Others Present: Mr. Kellerman, Mr. Neff, Mr. McDonald, Mr. & Mrs. Quaranta, and Mr. Moeller

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

SEATING OF MEMBERS

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

CONSIDERATION OF MINUTES

The approval of minutes from the Regular Meeting of May 26, 2009

MOTION: To approve the minutes of the May 26, 2009 Regular Meeting. By Ms. O'Conner, seconded by Mr. Horrigan and passed 4-0. Ms. Napier abstained.

WEO REPORT

Mr. Dirienzo explained that they would be reviewing a violation, which is on the agenda for the end of the meeting.

COMMUNICATIONS

River Alliance email – Celebrate the Shepaug

Mr. Dirienzo noted that they have been invited to the Celebrate the increased flows of Shepaug River. He noted all the IWC's help in facilitating this project.

Mr. Dirienzo reported that the DEP visited 381 South Street regarding the neighbor's concern with the IWC's approval of a crossing. He explained that the DEP agreed with the IWC's approval.

OLD BUSINESS

Roxbury Land Trust (Tierney Preserve) – Install log structures along Jack's Brook- IWC, WEO and Sean Hayden to report on site inspection

Mr. Dirienzo reported that a Special Meeting of the IWC has been posted for a site inspection with regard to this application. Any members interested may view the site on Wednesday, June 24, 2009. He reminded the Commission that no decisions are to be made in the field.

Steinman/32 River Road – Driveway, deck, shed and stonewall – IWC to report on site inspection

Mr. Neff presented a revised plan entitled House Site Improvements dated 6/22/09. He proposed changes to the driveway plan. He explained that he would like to bring the swales behind the walls to allow for more infiltration. He noted that the wall would act as a barrier.

Mr. Horrigan and Ms. O'Conner reported on their site walk. Mr. Horrigan noted that he had concerns with the driveway; however, Mr. Neff's revised plan addressed those concerns. He noted that the stonewall acts as a good barrier for the wetlands. Mr. Neff explained that they had planned to restack the

stone wall by hand, but do not have plans for activity beyond the stonewall. He agreed to make the owners aware that there should be no dumping or landscaping beyond the stonewall.

MOTION: To approve the application of Steinman/32 River Road – Driveway, deck, shed and stone wall as a regulated activity with the condition that no activity or dumping of landscaping material takes place beyond the stonewall. By Mr. Horrigan, seconded by Ms. O’Conner and passed 5-0.

High Meadow Riding Club (the Meadow) – Horse exercise ring

Mr. Dirienzo explained that the Commission agreed that this is a nonregulated activity at the last meeting. The town attorney has recommended that the Commission approve this in the form of a motion.

MOTION: To approve the application of High Meadow Riding Club (the Meadow) – Horse exercise ring as a nonregulated activity. By Mr. Dirienzo, seconded by Mr. Horrigan and passed 5-0.

NEW BUSINESS

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

Mr. Neff reviewed map entitled Brook Restoration and Culvert Replacement dated 6/2/09. He explained that the existing culvert is failing. He noted that it is rusting, soil is falling into the pipe and it fills up quickly with sand and sediment. He explained that the proposal is to remove the dam from the brook to return it to a more natural state. Plantings would be added on both sides of the watercourse and a 5 foot x 8 foot box culvert would be set into the brook’s bed by 1 foot. The proposal would be to first replace the culvert and then to remove the dam. Mr. Neff noted that Scott’s Landscaping is working on a planting plan.

Mr. Neff explained for Ms. O’Conner that a bottomless culvert would require excavation for footings on both sides. Mr. Dirienzo agreed that a bottomless culvert would create more disturbances.

Mr. Neff confirmed for Mr. Horrigan that the wetland soils would remain poorly drained soils and there should not be a drastic affect on the wetlands. Mr. Neff confirmed that there would not be any regrading of the pond and it will be left undisturbed. Mr. Horrigan noted his concerns that material will be washed down stream with the removal of the dam.

Mr. Dirienzo and Mr. Horrigan agreed to view the site. Mr. Dirienzo noted that he would be checking to ensure that planting is necessary.

COMPLAINTS/ENFORCEMENT

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

Mr. Dirienzo read aloud the Cease and Desist Order of June 19, 2009 regarding unpermitted regulated activities conducted at 6 Baker Road and 1 Judd’s Bridge Road, Roxbury, CT. He reported that both he and the WEO, Mary Barton, viewed the site. He noted that there was no erosion control in place for the work done in the wetlands. Large trees were placed across the brook to allow an excavator to cross, knock down the fence and create a large berm. He added that the State Police were called to the site as well. He explained that there is a civil matter with the abutting property owners regarding the property lines.

Dennis McDonald, agent for the property owner of 6 Baker Road, explained that the Cease and Desist Order written by Mary Barton should be corrected. He explained that the activity only took place at 6 Baker Road and 1 Judds Bridge Road should not have been referred to in the Order. He noted that the property line is not in dispute. Six acres were subdivided in 1981 leaving approximately 3 acres per parcel.

Mr. Dirienzo reviewed the application on file for the barn and brook crossing for 6 Baker Road. He noted that the application for the brook crossing was withdrawn. He explained that the civil matter is not the concern of the IWC. Their concern is with the activity in the wetlands performed without a permit. Mr. McDonald explained that the wetlands activity was performed because a play-scape was replaced on his property by the residents of 1 Judds Bridge Road. He made arrangements to remove the sod on the property because the owners of 1 Judds Bridge Road continued to maintain it. The trees were not cut down on site and were trucked in for this activity.

Henry Moeller, Soil Scientist for Mr. McDonald, explained that Mr. McDonald had the right to protect the property that the neighbors were encroaching upon. Using logs is common practice used by loggers to cross brooks. He advised that no permanent changes were made within the wetlands and that the only mitigation needed would be to remove the logs and to plant grass.

Mr. Dirienzo explained that the Commission would make the determination if they had a right to perform this activity. The Commission would also approve the appropriate mitigation, whether the contractor and property owner should be fined and if the Cease and Desist Order should be lifted. The Commission reviewed photos and a map of the area.

Joe Quaranta, property owner of 1 Judds Bridge Road, explained that the lawn was established prior to their residency at 1 Judds Bridge Road. He noted that Mr. McDonald has approached this matter in a malicious manner and this activity was performed to harass them because the civil matter was not going the way that Mr. McDonald wanted. He explained that he hired an attorney to deal with Mr. McDonald and has been following the advice of his attorney. Mr. Quaranta noted that the State Trooper took his statement and is sending it to the prosecutor for harassment, trespass and other charges.

Henry Moeller suggested that perennial rye be planted and hay bales placed. Mr. Horrigan suggested that Mr. Moeller create a mitigation plan, which should be reviewed by an independent party. The Commission agreed that Sean Hayden of NW Conservation District should review the plan. They also agreed that temporary stabilization should be placed by July 1, 2009 including hay bales and silt fence for erosion control. The logs should remain as they are until the mitigation plan is approved at the next meeting of the IWC.

MOTION: The Cease and Desist Order will remain in effect until the IWC reviews mitigation plan at their next meeting. By Ms. Napier, seconded by Ms. O'Conner and passed 5-0.

The Commission agreed to reserve the right to fine the property owner until the mitigation required can be reviewed. Mr. Dirienzo noted that he has had complaints of issues occurring downstream of this activity and will need the opportunity to review concerns.

Mr. Dirienzo recommended a fine of \$250 to the contractor, Elmer Lewis and Sons Construction Company, who performed this work. He explained that any contractor operating in Roxbury should be aware that making a profit by violating wetland regulations will not be tolerated. Mr. McDonald explained that Elmer Lewis and Sons Construction were operating under his order and he assured them that he would be present at this meeting and their presence was not required. The Commission agreed that it is the contractor's responsibility to understand the regulations and should have been aware of their violations with regard to this project.

MOTION: To assess a fine of \$250 to Elmer Lewis and Sons Construction for the violation of Wetland Regulations of the Town of Roxbury and State of Connecticut. By Mr. Dirienzo, seconded by Ms. Napier.

Discussion: Ms. Fitch, Ms. O'Conner, Mr. Horrigan and Ms. Napier discussed that that this was a blatant violation and that the amount of the fine should be the maximum allowed. Mr. Dirienzo explained that his intention was to send a message and not to hurt a working person.

Mr. Dirienzo withdrew his motion.

MOTION: To assess a fine of \$1000 to Elmer Lewis and Sons Construction for the violation of Wetland Regulations of the Town of Roxbury and State of Connecticut. The fine is to be paid to the Roxbury Land Acquisition Fund within 30 days. By Mr. Horrigan, seconded by Ms. Fitch and passed 4-1. Dirienzo opposed.

MOTION: To adjourn the meeting at 8:55 PM. By Ms. O'Conner, seconded by Mr. Horrigan and passed 5-0.

By: _____
Tai Kern, Clerk

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

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