

**Regular Meeting
Monday, September 14, 2009**

MINUTES

Members Present: Robert Falconer, James Conway, Mary Elizabeth Peck, Elaine Urban

Members Absent: Gary Coburn

Alternates Present: William Weed, Stewart Kellerman

Other Present: Barbara Henry, John Friedman, David Beglan, Michelle & Tim Stuart, and Dennis McDonald

Staff Present: Karen Eddy

Call to Order: Chairman Falconer called the meeting to order at 8:43 PM.

Seating of Members: Chairman Falconer seated regular members Falconer, Conway, Peck, Urban and Kellerman for Coburn.

Approval of Minutes:

MOTION: To approve the minutes of the Public Hearing of August 10, 2009 as written. Motion by James Conway, seconded by Stewart Kellerman and unanimously approved.

MOTION: To approve the minutes of the Regular Meeting of August 10, 2009 as amended:

- Page 1, para. 6, 1st sentence – Change Chairman Falconer recalled that to Karen Eddy asked if a public hearing date.....
- Page. 1, para. 6, 2nd sentence – Change He to Robert Falconer concluded....
- Page 1, para. 3, Delete (See draft motion attached).
- Page 3, para. 3, Add – After polling the members, Mr. Falconer....
- Page 5, para. 5-Delete - with the use or the parcel or with

MOTION BY: James Conway, seconded by Elaine Urban and unanimously approved.

Ms. Peck thanked Mrs. Eddy for a great job on the minutes.

Stuart/160 Baker Road – Special Permit Application for a Bed and Breakfast:

Mr. Conway said he did not a problem with the proposal. Mr. Falconer asked if Mrs. Barton agreed that all required permits have been obtained. Mrs. Eddy said that as far as she knew there is agreement as to what needs to be done. Mr. Falconer suggested that the motion should be contingent on all approvals being obtained.

Mr. Kellerman agreed. Ms Peck noted her agreement. Mrs. Urban said she sees no the problem with the application because it is within the regulations.

MOTION: To grant a special permit to the Stuarts for a Bed and Breakfast at 160 Baker Road contingent upon obtaining all required approvals. Motion by Stewart Kellerman, seconded by Mary Elizabeth Peck. Motion carried unanimously.

Utility Cabinets – Addition of Section 5.3.1.i to Zoning Regulations:

The following Town Attorney’s recommendations were reviewed:

“Any Electrical Supply Meter Pod and/or Utility Box located within the 50’ (fifty-foot) applicable front setback is permitted providing it must be screened from view of any road on which the property front or abuts. The screening must be of natural type i.e. evergreen trees or shrubs that will not lost their effectiveness throughout the year.”

The Town Attorney’s recommendations were discussed. The Commission agreed upon the following text amendments: Applicable would replace 50’ (fifty-foot); is permitted providing would be removed and or abuts would be added.

MOTION: To amend the Roxbury Zoning Regulations by adding: *Section 5.3.1.i: “Any Electrical Supply Meter Pod and/or Utility Box located within the applicable front setback must be screened from view of any road on which the property front or abuts. The screening must be of natural type i.e. evergreen trees or shrubs that will not lost their effectiveness throughout the year.”*

MOTION by James Conway, seconded by Elaine Urban and unanimously carried.

Mrs. Henry thanked the Commission for their work on this regulation.

Building Lot Requirements: - Discussion tabled by Chairman Falconer.

ZEO Report – Mr. Falconer noted that Mary Barton is absent due to illness and was unable to file a report. He extended her well wishes from the Commission.

DISCUSSION OF POSSIBLE ZONING AMENDMENTS:

Restaurants as permitted uses by special permit: In concert with Mr. Coburn, Mr. Kellerman prepared and distributed a proposed amendment to Section 4.7 for discussion purposes. He noted that Mr. Coburn suggested a maximum seating capacity of 20, but Mr. Kellerman felt that was too limiting. Mr. Falconer felt that parking regulations and septic size would naturally limit seating capacity. Mr. Kellerman recommended removing the seating limits. Mr. Weed and Mr. Falconer agreed. Mr. Kellerman also felt that it was illegal to prohibit chain restaurants and would recommend removing that section. He felt that prohibiting drive-thrus would make chain restaurants unlikely. He also noted that eliminating “food” under 20.61 might create problems for the Roxbury Market and he suggested that Gail McTaggart should be consulted. Mr. Falconer said he would seek the opinion of the ZEO. Mrs. Urban said the Market’s special permit is nonconforming, which posed certain restrictions regarding seating capacity and what can be sold. Mr. Falconer suggested waiting until Mr. Coburn returns to get his ideas. Mrs. Urban strongly urged a restriction on seating. She offered to research what other towns have done to restrict chain restaurants. Mr. Kellerman said we can do things that would make chains unlikely, but we can’t prohibit them in the regulations. Mr. Weed expressed concern about limiting seating because it would discourage entrepreneurs. Mr. Weed wondered about the seating of the Pantry in Washington. Mrs. Urban thought that might be studied as a viable example. Mr. Weed felt Roxbury could use another restaurant. Mrs. Henry felt that we should encourage the success of a new restaurant and suggested that Roxbury Station would be a good site.

Limiting the number of enterprises allowed on properties in Zone D:

Mr. Falconer noted that there are no regulations that either limit the number of enterprises in Zone D or that requires a minimum amount of square footage in order to start a business. He asked if the Commission was interested in addressing this issue. Mr. Conway said he did not feel the Stuarts are overusing their property. He felt that neither the flower shop nor the food stand would attract a large amount of traffic and cause congestion on route 67. Mr. Conway noted that it depends on the type of

business as to whether another one should be allowed. Mr. Conway did not see a problem with the three businesses being undertaken by these enterprising young people. Mr. Weed suggested that the traffic regulations would provide some limits.

Mr. Kellerman suggested requiring a special permit for more than one enterprise and this would allow the Commission the opportunity to evaluate the impact. Mr. Falconer said that our regulations allow certain businesses without a public hearing now. Mrs. Urban wondered how the Commission would feel if the Stuarts came back and wanted to start another business. Mr. Kellerman suggested reviewing the Home Enterprise Category III regulations for guidelines. Mrs. Henry noted that she had received phone calls from residents who inquired about how many businesses are allowed on one piece of property. Mr. Falconer suggested reviewing the list of approved businesses and deciding what type of businesses or how many might have too much impact.

Mr. Falconer said he would ask Mary Barton to do a build-out study for Zone D including all the properties and the possible impact. Based on the results we can decide how to proceed. Mr. Kellerman did not feel that these three businesses were too much. Mr. Weed questioned how often this sort of thing comes up. Mr. Falconer said that trying to make a go of a business in this town is difficult. Most people take Weller's Bridge so Route 67 doesn't get the traffic. It was noted that the Day Care Center is doing well. Mrs. Henry suggested that it needs to be destination to be successful.

Mrs. Henry asked how many signs are allowed on one property. Mr. Falconer noted that one for each business is allowed. Mrs. Urban thought that the Stuarts would only have one sign. Ms. Peck reminded that it is the Commercial District. Mrs. Urban noted that Woodbury had a problem and rewrote their regulations. Mr. Weed said he did not see a problem with the signage. Mr. Falconer noted that that the entire Commercial District is only from the Roxbury Station to Bonnie Bradley's house and that's not a huge area. Mr. Kellerman noted that the area is limited by septic, space and parking. Mr. Falconer reiterated that once the ZEO has reported on the build-out, the discussion would be continued.

Deer Fencing: It was noted that the Mary Barton has done some research on this issue and would present it to the Commission.

Chairman's Report:

Mr. Falconer reported that the High Meadow Riding Club has sued the Commission. If the Commission wished to discuss it, they would have to go into executive session.

MOTION: To add to the agenda and enter into Executive Session to discuss the pending litigation by High Meadow Riding Club against the Roxbury Zoning Commission and to invite the First Selectman, Barbara Henry, new zoning member, John Friedman and the Land Use Administrator, Karen Eddy. Motion by James Conway, seconded by Elaine Urban and unanimously approved.

MOTION: To end Executive Session at 9:56 PM. Motion by Elaine Urban, seconded by James Conway and unanimously approved.

Chairman Falconer suggested that the Town Attorney should attend the October Zoning Meeting to discuss the pending litigation of the High Meadow Riding Club.

Communications:

Chairman Falconer noted the communication items that were received by the Commission.

Chairman Falconer noted that a request had been received from Mr. McDonald to be on the agenda. When Mr. McDonald was asked what he would like to discuss with the Commission, he did not respond.

Chairman Falconer asked Mr. McDonald again what he wanted to discuss with the Commission. Mr. McDonald responded that he wanted to discuss the meeting with the Commissions that was called by the Board of the Selectman.

MOTION: To add Dennis McDonald to the agenda. Motion by Elaine Urban, seconded by Stewart Kellerman and unanimously approved.

Referring to a recent meeting held by the Board of the Selectman with the Planning, Zoning and Conservation Commissions which addressed possible election of the Zoning Commissions, Mr. McDonald said he wanted to clarify that the reasons he had asked for such a meeting had nothing personal to do with any member of the Board. He indicated that because he was not able to speak at that meeting, he would like to address the Zoning Commission directly.

Chairman Falconer explained that there is a legal difference between a meeting and a hearing. A meeting is not open to comments by the general public, but a hearing is open to anybody who wants to speak. When Mr. McDonald expressed concern that the meeting was not well publicized, Mr. Falconer responded that meetings don't typically get the same kind of publicity that hearing do.

Mr. McDonald told the Commission that he and his wife had attended the Zoning meetings where changes to the regulations were discussed (four-acre minimum lot size). He noted that the Planning Commission, which is elected, is charged with the long-term vision for the town. He asked if the Planning Commission had given an indication that they wanted the change to four acre zoning?

Mrs. Urban wondered why Mr. McDonald was asking this question. Mr. McDonald said he wanted to understand the process and confirm whether Planning had made a recommendation to zoning. Mrs. Urban said she did not recall but stated that the recommendations of the Planning Commission and the Plan of Conservation and Development (POCD) are taken seriously. Zoning is charged with considering them, but not bringing them to law.

Mr. Falconer explained that the Zoning Commission reviewed the list of items assigned to it in the POCD and implemented those they felt were sound. The increase to the lot size was related to one of the recommendations in the POCD. Mr. Kellerman said the 1999 POCD expressed concerns about development and suggested that Zoning find ways to cope with predictions of future population growth. The Commission spent several years looking at this issue. Mr. Kellerman and Mrs. Urban spent many hours reviewing regulations and plans of other towns to understand what could be done to slow development. They came up with a dozen possible ideas and increasing lot size was one of them. They recommended doing some other things first. After spending 22 months discussing this issue, the majority of the Commission supported the four-acre zoning. Mr. Kellerman noted that the Commission was trying to respond to the concerns expressed in the POCD.

Mr. McDonald said he understood that the Chairman of the Planning Commission conveyed that they were not in favor of changing to four-acre zoning. Mr. Kellerman noted that the Chairman seemed opposed, but not all members of the Planning Commission. He noted that Arlene Kershner, who spoke at the public hearing, didn't think it was necessary, but was not strongly opposed to it. Mr. Kellerman reiterated that the Zoning Commission was responding to its assigned tasks listed in the 1999 POCD.

Mr. McDonald noted that the whole town has been rezoned except for a couple of small areas. In his opinion, Zoning went against the recommendations of an elected board and disparaged that board. Mrs. Urban said she did many hours of research and the Commission put in an exorbitant amount of time on this issue. There was no intent to disparage any individual or Commission. The decision was made for the benefit of the whole community.

Mr. McDonald indicated that he is aware of attempts to get the Zoning Commission elected. His purpose is to get the facts and understand the process.

Mrs. Urban reiterated that concerns about density were expressed many times in the POCD and these are the guidelines followed by the Zoning Commission.

Mr. Kellerman noted that the consultant hired to work on the new POCD specifically said that the Zoning Commission has done a really good job of putting into effect regulations called for in the previous POCD. Mr. McDonald suggested that the opinions that count are the residents and taxpayers.

Mrs. Urban said she feels that the Zoning Commission has a high level of accountability to both the citizens and the Board of Selectman who appoints them.

It was Mr. McDonald opinion that there would be more people at meetings if they were open to public participation. Mr. Falconer commented that he does not see crowds at Planning Meetings.

Referring to a letter he received from the Zoning Commission, which asked why he wanted to be on the agenda, Mr. McDonald said it did not bode well for the Commission. In his opinion the Chairman (of a commission) cannot decide what should be on the agenda. The Chairman's role is only to conduct the meetings.

Mrs. Henry reminded Mr. McDonald that he was speaking before the Commission. Mr. McDonald said he thought that public participation had been allowed, but was eliminated a while ago. Mr. Falconer noted that public participation was never on Zoning's agenda. Mr. McDonald felt that it is vital to a board that is not elected. Mr. Falconer invited Mr. McDonald to write a letter to the Commission at any time and it would be circulated and read.

Mrs. Henry noted that Mr. McDonald kept referring to himself as a taxpayer even though he is not a taxpayer or a registered voter. She further noted that Mr. McDonald appears to dislike everything about the town. Mr. McDonald said he is against too much change.

Mr. Urban said the Zoning Commission did an exemplary job of executing the 1999 POCD but is being criticized for following the Plan. She said she honored Mr. McDonald's right to speak.

Mr. McDonald asked that the Commission remember that one's property is their largest asset. He expressed unhappiness with the changes he sees.

Mr. McDonald noted that he provided the Board of Selectman with a copy of a complaint that he made to the ZEO and has not yet received a response. He also noted that Mr. Dirienzo told him he would follow up on it. When Mrs. Urban asked if the complaint was about the four-acre zoning change, Mr. McDonald responded that his complaint had to do with an encroaching structure to his side yard. Mr. Falconer indicated that he would follow up with the ZEO regarding this issue.

MOTION: To adjourn the meeting at 10:22 p.m. Motion by Stewart Kellerman, seconded by Mary Elizabeth Peck. Motion carried unanimously.

Respectfully submitted,

Karen Eddy
Land Use Administrator

Cc: Board of Selectman, Planning Commission, Conservation Commission, Town Attorney, Zoning Enforcement Officer

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