

**THESE MINUTES ARE SUBJECT TO APPROVAL BY
THE ROXBURY ZONING COMMISSION**

**ROXBURY ZONING COMMISSION
ROXBURY, CONNECTICUT 06783**

**Regular Meeting
Monday, December 7, 2009**

MINUTES

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

Alternates Present: Stewart Kellerman, John Friedman and William Weed

Staff Present: Karen Eddy

Others Present: Paul Szymanski, and Paul S. Szymanski, David Sherman, Steven Zaleta, Jane McMahon, Frank Lasky, Mark Lowe, James Garofalo, Rock Arbitell and Susan Tuz

Call to Order: Chairman Falconer, called the Regular Meeting to order at 7:30 p.m.

Seating of Members: Chairman Falconer seated regular members Robert Falconer, Gary Coburn, Elaine Urban, Mary Elizabeth Peck and James Conway.

Approval of Minutes - Regular Meeting of November 9, 2009:

MOTION: To approve the minutes of the Regular Meeting of November 9, 2009 as amended: Page 5, Para. 7, replace 3rd sentence with: "Mr. Falconer wanted Mary Barton to investigate and based upon her investigation a possible cease and desist might be needed." Motion by Elaine Urban, seconded by Gary Coburn. Motion approved 3 votes favorable, 2 abstentions.

Building Lot Requirements:

Elaine Urban requested that this item be tabled.

ZEO Report:

Due to Mary Barton's absence, Chairman Falconer tabled the ZEO report. He noted that the town attorney has approved the Commission's proposed regulation on deer fencing.

Paul S. Szymanski explained that Mary Barton had invited him to attend the Zoning Meeting to discuss his father's property (Paul Szymanski, 230 Baker Road). Mr. Falconer expressed concern because the ZEO was not present to report and the Commission was not prepared to address this issue. Mr. Falconer asked if the Commission wished to add Mr. Szymanski to the agenda.

Mr. Szymanski noted that he was given the choice of attending either the December or the January Zoning Meeting. He also noted that his entire family was present with the expectation of being given the opportunity to speak.

Elaine Urban suggested that the Commission listen to what Mr. Szymanski has to say and refrain from commenting.

MOTION: To add the Szymanskis to the agenda to hear their point of view for the record.
Motion by Gary Coburn, seconded by James Conway and carried unanimously.

MOTION: To add the election of the Zoning Chairman and Vice Chairman to the agenda.
Motion by Elaine Urban, seconded by Mary Elizabeth Peck and unanimously approved.

Chairman Falconer noted that the election would be added to the end of the agenda.

Paul S. Szymanski, Professional Engineer stated he represented his parents Paul and Linda Szymanski of 230 Baker Road. (Mr. Szymanski distributed binders to each Zoning Commissioner). He noted that the Commission has discussed his parent's property for the past six to eight months and he wanted the opportunity give their side of the issue. Mr. Szymanski read his 17-page letter dated December 7, 2009 entitled Zoning Commission Harassment of Paul & Linda Szymanski, 230 Baker Road, Roxbury, Connecticut. He noted the purpose of the letter was to rebut what he called "false accusations" made by Steven Zaleta about his father at the November 9, 2009 Zoning Meeting. The following are some of the issues raised in Mr. Szymanski's letter.

- Questioned why Mr. Zaleta was allowed to speak at the November 9, 2009 zoning meeting when he was not on the agenda.
- Questioned why Mr. Pierpont visited the Szymanski property in response to a verbal complaint by a neighbor prior to February 9, 2009. Requested copies of all verbal complains to insure the Szymanski's are not being singled out.
- Questioned why the Commission would investigate a verbal complaint made to Selectman Dirienzo when enforcement is the responsibility of the ZEO.
- Took issue with why the Commission allowed Mr. Lasky to be "vilified" by a neighbor at the last Zoning Meeting without warning that he would be on the agenda.
- Questioned why the Szymanski property continued to be discussed at zoning meetings even though it was not on the agenda and the Szymanski's were not notified.
- Questioned Mrs. Barton's statement at the April 13, 2009 meeting that complaints were made by abutting neighbors.
- Summary of zoning discussion about parking regulations.
- Concerns about the Szymanski's being singled out for enforcement.
- Decision by Zoning Commission to look at all similar businesses in town before deciding on a course of action.
- Questioned why Szymanski's were not invited to respond to the accusations made by Mr. Zaleta
- Claim that Mr. Zaleta trespassed illegally on the Szymanski property to take photos.
- Refute Mr. Zaleta's claims about stockpiling and processing dirt.
- Stockade fencing has been installed to screen triaxle from view of neighbors.

- Refute claim by Mr. Zaleta that his photos were taken from his property and are a true representation of what is on the Szymanski property.
- Note that Szymanski's have been residents of Roxbury for 35 years.
- Request that the Commission undertake an investigation of Mr. Zaleta's home business "NetSolutions" which lists 3 employees.
- Addressed claims by Mr. Zaleta about a building in the setback and building a stone patio. Explained that the structure in the setback is a preexisting, nonconforming historic out house and that a fieldstone wall is being built along the property the line.
- Complaint that the Zoning Commission is arbitrary and capricious by allowing Mr. Zaleta to make defamatory and slanderous statements without allowing rebuttal.
- Binder included list of 124 commercial vehicles registered in Roxbury and 167 potential home enterprise businesses.
- Filed formal complaints against all 167 businesses listed in submitted documents.
- Noted finished fence along Old Lane will eventually obscure view of the Szymanski property.

Paul Szymanski felt that if the Commission is going to look at his father's property, they should also look at others along Route 67 such as Pokrywka's milk truck, Sparky Lowe's equipment, a garage that is falling down and a junkyard. He asked the Commission to look at the information that they submitted and thanked them for their time.

Mr. Conway pointed out that there is a difference between a farm and a home enterprise. Mr. Szymanski argued that the Zoning regulations do not distinguish between farming and commercial activities. Mrs. Urban noted that her design business is registered with the Secretary of State.

Mr. Kellerman commented that the Commission would need time to digest the information that has been submitted. Mr. Szymanski said that the parking of commercial vehicles in town is a real issue and it is not limited to a small number of people. Mr. Kellerman explained that the Commission was responding to a complaint. It was not going out and looking for problems to single anyone out.

Mr. Szymanski asked that he be notified if the Commission is going to speak about him. Mr. Falconer responded that we don't always know what will be in the zoning enforcement report. Mr. Szymanski argued that if you don't allow public comment, but do allow neighbors to speak, then it is not fair.

Mrs. Urban suggested that the neighbors should notify each other if they plan to speak about them. Mr. Szymanski noted that they had asked Mrs. Barton to let Mr. Zaleta know that they would be at the meeting to discuss this issue.

MOTION: To add Steven Zaleta of 30 Old Lane to the agenda. By Elaine Urban, seconded by James Conway and unanimously approved.

Steven Zaleta and his wife Jane McMahon addressed the Commission. Mr. Zaleta suggested that all of this could have been avoided when over a year ago he approached Mr. Szymanski in a neighborly manner. When he asked Mr. Szymanski what was going on, he got very evasive answers. Mr. Zaleta noted that his brother who has lived in here for 30 years convinced him that Roxbury was a pretty great town.

Mr. Zaleta explained that the essence of his complaint in May was that in his opinion what was going on at 230 Baker Road was not a permitted use in a residential zone and according to the regulations, anything that is not permitted is prohibited. He said, "If you had to look at it every day, you would not be happy".

Mr. Zaleta explained that he took the photos in questions from Mr. Rossiter's property with a telephoto lens and reported the date they were taken to the Land Use Office as requested.

Mr. Zaleta noted that he operates his business over the telephone from his home. He is the president and his wife is the vice president. His associate, Steven Pitt, lives in Sherman and has been to his house once in the last month.

Jane McMahon, noted that in February Mr. Szymanski informed the Commission that his business, Moonlight Excavating, was headquartered in Naugatuck, but the Secretary of State's Office shows that it is headquartered at 230 Baker Road. She also noted that Mary Barton was told by the Assessor's Office in Naugatuck that there was no Moonlight Excavating registered in Naugatuck.

Jane McMahon gave the analogy of several cars speeding, but the police single out only one. The one that is stopped, must respond, deal with the law and take the consequences. The fact that others may be operating a commercial business in a residential zone does not relieve Mr. Szymanski of his responsibility to follow the zoning laws.

Jane McMahon noted that Steve Zaleta, who built his house in 2005, is a Justice of the Peace, serves on the Republican Town Committee and the Planning Commission. She is a former Judge of Probate and serves on the Democratic Town Committee. She notes they are both involved in trying to make towns work. In her opinion, this is an enforcement issue? If this business does not fit under the home enterprise regulation, then it's a commercial operation in a residential zone and requires a cease and desist and removal of the commercial vehicles.

MOTION: To add Jim Garofalo of 179 Baker Road to the agenda. Motion by Gary Coburn, seconded by Elaine Urban and unanimously approved.

Mr. Garofalo commented that the Szymanski property is not zoned for a Commercial Business and questioned why these situations have gone unchallenged. He questioned whether it was due to a lack of zoning enforcement in the past. He suggested that the ZEO should work more hours and might need an assistant.

Mr. Garofalo asked about enforcement procedures. He wondered if Mrs. Barton is the only one who goes out on complaints or do members of the Commission? Mr. Falconer responded that she is the eyes and ears of the Commission. She gathers the facts and presents them to the Commission. Mr. Garofalo wondered if Mrs. Barton has the authority to make decisions without going through the Commission when the situation is clear-cut. Mr. Garofalo said, "I live in the melting pot with the Rossiter's and Fran Hodges – it seems to be one small junkyard after another." He questioned whether anything could be done about the problem of blight and not just unregistered vehicles in Roxbury.

Mr. Kellerman noted that the issue of blight had been discussed by the Commission. According to Mrs. Barton, other towns have considered it but found it very difficult to define blight. He also noted that junkyards are controlled by state statutes.

Mr. Garofalo said he feels the situation is getting worse and attributes it to a lack of enforcement by the ZEO.

Mr. Falconer explained that our current ZEO (Mary Barton) beside her normal work has many tasks on her plate one of which is to compile a list of what we have in town. These processes are ongoing and it may appear that we're not doing anything, but its just taking a while. He asked for the town's indulgence. He feels that Zoning Commission members are impartial, they try to listen to both sides and they try to do what's best for the town.

Mr. Conway suggested that the Commission review permitted uses in regard to when a Home Enterprise Permit should be required if employees are involved.

Rock Arbitell, a businessman from Southbury, asked to speak to the Commission about a group of small businesses he is forming. The Commission agreed with Mr. Coburn that it was not the appropriate time.

Chairman's Report:

Chairman Falconer tabled this report.

Zoning Meeting Calendar for 2010:

Chairman Falconer read the list of proposed meeting dates for 2010 as follows: January 11, February 8, March 8, April 12, May 10, June 14, July 12, August 9, September 13, October 12, November 8 and December 6.

MOTION: To accept to meeting dates for 2010 as written. Motion by Gary Coburn, seconded by MEP. Motion carries unanimously.

Mr. Falconer thanked Mrs. Eddy for all she does for the Commission.

MOTION: To add to the agenda a review of the draft letter to the Roxbury Planning Commission. Motion by Elaine Urban, seconded by James Conway and unanimously approved.

Chairman Falconer noted that this item would follow the Review of the E-Version Regulations.

Review of reformatted Zoning Regulations (E-Version):

Chairman Falconer thanked Karen Eddy and her daughter, Lauren for an absolutely wonderful job on the E-Version regulations. He suggested that the discussion should cover only the table of contents sections that refer to the sections being reviewed. Chairman Falconer clarified that the goal is to insure that we have a faithful reproduction of the current regulations in print so that they can put them on line. In response to Gary Coburn's question, Mr. Falconer agreed that spelling and grammar could be corrected as long as there is no change in the intent of the regulation. It was agreed that Gary Coburn would record any approved corrections on his laptop as a back up for Mrs. Eddy who would record corrections on the paper copy.

The Commission reviewed pages 1 thru 25 of the E-Version Regulations including the Table of Contents and all changes were approved by consensus. Mrs. Eddy recorded changes on the paper copy of the regulations and Gary Coburn recorded the changes to a word document on his laptop. John Friedman agreed to keep a record of any style changes the Commission agrees upon.

It was agreed that the following style issues would be used throughout the regulations:

- The year would be written out in the footnotes ex: 5-27-2009
- Serial commas before and (, and) would be used
- Both the written and numerical version of numbers would remain: ex: (30) Thirty.

Elaine Urban and Stewart Kellerman agreed to track potential (Phase 2) changes to the regulations so they could be addressed by the Commission in the future.

Chairman Falconer asked Commissioners to prepare for review pages 26 through 50 of the E-Version Regulations for the next meeting.

Response to Planning Letter re: 1999 POCD:

William Weed noted that he and Elaine Urban had been assigned the task of drafting a response to the Planning letter. He felt that the draft prepared by Elaine Urban could not be improved and was being presented to the Commission for review. Mrs. Urban read the draft letter. Commission members suggested changes, which were recorded. She agreed to email the approved modifications to Mrs. Eddy who will prepare the final letter and forward it to the Planning Commission.

MOTION: To direct the Land Use Administrator to mail a reply to the Planning Commission's letter dated October 29, 2009 with the approved modifications. Motion by James Conway, seconded by Gary Coburn and unanimously approved.

Chairman Falconer thanked Elaine Urban for her work on the letter.

Chairman Falconer called a 5-minutes recess at 10:34 p.m.
He reopened the meeting following the recess at 10:40 p.m.

MOTION: To enter into executive session at 10:41 p.m. to discuss the Pending Litigation of Lasky vs. the Zoning Commission and invite all Regular Members, Alternate Members and the Land Use Administrator. Motion by James Conway, seconded by Gary Coburn and unanimously approved.

MOTION: To end executive session at 11:01 p.m. Motion by Elaine Urban, seconded by Gary Coburn and unanimously approved.

Chairman Falconer requested that the Town Attorney be invited to the February Zoning meeting to attend an executive session on the pending litigation of Lasky vs. the Zoning Commission.

Communications:

ZBA Minutes:

Chairman Falconer noted an upcoming ZBA hearing on a shared driveway. He discussed the many problems experienced in the past related to shared driveways. He explained that because of many lawsuits and public spats the Zoning Commission amended its regulations to prohibit shared driveways. When the Driveway Ordinance was passed the only part of it that stayed in the Zoning regulations was the prohibition against shared driveways. He asked that members consider attending the Public Hearing on December 17, 2009. He reminded that Commissioners could not speak on behalf of the Zoning Commission but only as private citizens.

Mr. Weed noted that the applicants for the shared driveway are his neighbors and they own both pieces of property that would share the driveway.

Letters from Mr. Sherman/90 Mallory Road:

Chairman Falconer noted that he had replied to Mr. Sherman's previous letter and asked if the Commission wanted to reply to Mr. Sherman's third letter. Mr. Weed complimented Mr. Falconer on his response and suggested that a second reply should come from the Commission. The Commission agreed with Mr. Friedman's suggested response and gave him permission to compose a response to Mr. Sherman letter. Mr. Friedman will forward the letter to Mrs. Eddy for mailing.

Referral from NWCCOG re: Public Hearing on restaurants in Washington:

Chairman Falconer asked if the Commission wished to comment on the referral from Washington. He noted that when towns change their zoning regulations the adjacent towns affected are given the opportunity to comment. No comments were offered.

Election of Chairman and Vice Chairman:

Mr. Falconer said he has been chairman for five years and he would like to give somebody else the opportunity to serve. He opened the floor to nominations.

MOTION: To nominate James Conway as Chairman of the Zoning Commission for 2010.

Motion by Elaine Urban, seconded by Mary Elizabeth Peck and unanimously approved.

MOTION: To close nominations. Motion by Gary Coburn, seconded by Mary Elizabeth Peck and unanimously approved. The Vote to appoint James Conway was unanimous.

MOTION: To nominate Robert Falconer as Vice Chairman. Robert Falconer declined to accept.

MOTION: To nominate Gary Coburn as Vice Chairman of the Zoning Commission for 2010.

Motion by Robert Falconer, seconded by Elaine Urban and unanimously approved.

MOTION: To close nominations by James Conway, seconded by Mary Elizabeth Peck and unanimously approved. The vote to appoint Gary Coburn was unanimous.

MOTION: To adjourn the meeting at 11:18 p.m. Motion by Robert Falconer, seconded by Mary Elizabeth Peck and unanimously approved.

Respectfully submitted,

Karen Eddy
Land Use Administrator

CC: First Selectman, Town Clerk, Planning Commission, Wetlands Commission, Conservation Commission, ZEO, Town Attorney

Minutes are subject to approval by the Roxbury Zoning Commission.