

THESE MINUTES ARE SUBJECT TO APPROVAL BY  
THE ROXBURY ZONING COMMISSION

**ROXBURY ZONING COMMISSION**  
**ROXBURY, CONNECTICUT 06783**

**Regular Meeting**  
**Monday, November 9, 2009**

**MINUTES**

**Members Present:** Robert Falconer, Elaine Urban and Gary Coburn

**Members Absent:** James Conway and Mary Elizabeth Peck

**Alternates Present:** Stewart Kellerman, John Friedman and William Weed

**Staff Present:** Karen Eddy

**Others Present:** David Sherman and Steven Zaleta

**Call to Order:** Chairman, Robert Falconer, called the Regular Meeting to order at 7:36 p.m.

**Seating of Members:** Chairman Falconer seated regular members Robert Falconer, Gary Coburn, Elaine Urban, William Weed for Mary Elizabeth Peck and John Friedman for James Conway.

**Approval of Minutes - Regular Meeting of October 13, 2009:**

**MOTION:** To approve the minutes of the Regular Meeting of October 13, 2009 as written. Motion by John Friedman, seconded by Gary Coburn and unanimously approved.

**Building Lot Requirements – Continue discussion:**

Chairman Falconer mentioned the article regarding ‘McMansions’ that was included in the meeting packet. Mrs. Urban noted a trend toward smaller homes, which is supported by the ‘green’ movement and rising fuel costs.

**ZEO Report:**

As Mary Barton had not arrived at the meeting, Chairman Falconer moved the ZEO Report to follow the Chairman’s Report on the agenda.

**Discussion of possible zoning amendments:**

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

Chairman Falconer noted that Mary Barton would be presenting a build-out report of Zone D to the Commission.

**Deer fencing:**

The Commission reviewed a proposed amendment on Deer Fencing. Following discussion it was agreed that section (b) would be deleted because it was redundant. The text would read as follows:

**3.5.2 a. Deer Fences may be installed to a height not to exceed eight (8) feet provided that:**

- a) **A deer fence installed in a front yard shall meet the front yard setback as stipulated in the master chart.**
- ~~b) **The deer fence and associated appurtenances shall be of a dark or other color to blend with the natural landscape.**~~
- b) **Such fence shall be of open design such that it is not visible at a distance of fifty (50) feet.**

The question of whether deer fencing should be allowed within the rear and side setbacks was discussed. Chairman Falconer said he would speak to the Town Attorney about this issue.

**New Signs in Zone D:**

It was noted that Mary Barton would address this item.

**Review of reformatted Zoning Regulations (E-Version):**

Chairman Falconer thanked Karen Eddy and her daughter Lauren for undertaking this big project. He suggested that the Commission should take the next six months to review the E-Version regulations. Mr. Falconer asked that Commissioners review and be prepared to discuss 25 pages at each meeting beginning in December.

Mr. Kellerman noted that he had reviewed all the changes and did not notice any substantive mistakes. There are 3 or 4 questions that Karen Eddy raised that need to be answered. Mr. Falconer noted that the Commission must read the entire regulations line by line to verify that the E-Version is an accurate representation of the current regulations.

Mr. Kellerman commented that Karen Eddy did a terrific job and he expects only minor changes to be necessary. He agreed that reviewing 25 pages at each meeting would be fine.

Mrs. Urban asked if this would be the appropriate time to consider any changes to the regulations. Mr. Falconer thought that that would bog the process down and should be done separately. The goal now is simply to verify that the e-copy is a faithful reproduction of our current regulations. If there are changes the Commission wants to address, let him know and they would be added to the agenda as separate items.

Stewart Kellerman noted that changing a few words would clarify the meaning of Section 20.38. He wondered if that sort of change could be done administratively or would it require amending the regulations. Robert Falconer noted he was not certain where the threshold was to require a public hearing. Karen Eddy offered to consult the Town Attorney for clarification.

Mrs. Urban asked if we should make a list of things such as that definition that needs to be addressed possibly at the end of the review? Mr. Falconer clarified that we are reviewing for any discrepancy between what is in the e-version and our current regulations. Mr. Kellerman suggested printing out those pages where there is a question.

Mr. Falconer suggested treating this like the meeting minutes. He would like the majority of the members to go through the regulations to insure accuracy. He restated that the goal would be to insure that the current version of the regulations was accurately translated into an electronic version.

**Chairman's Report:**

Alluding to the recent ballot question about whether the members of Zoning Commission should be elected, Chairman Falconer thanked the people of Roxbury for voting not to change the way the Commission is selected (by the Board of Selectman).

### **Communications:**

#### **Letter from the Planning Commission – Re: 1999 POCD:**

Chairman Falconer asked the Commission if they would like to reply to the letter. Mr. Weed and Mrs. Urban suggested that a formal reply would be appropriate. They agreed to draft a letter and present it at the next Zoning meeting for discussion. The draft would be forwarded to Mrs. Eddy for distribution.

#### **Letter from Mr. Sherman/90 Mallory Road:**

Mr. Falconer noted that he just received the letter from Mr. Sherman in his meeting packet. When asked by Mr. Coburn if he was aware that the Lasky permit was in litigation, Mr. Sherman confirmed that he was aware of it. Mr. Weed wondered if Mr. Sherman had seen any changes since the Commission's recommendations were made. Mr. Sherman indicated that Mr. Lasky has tried to moderate the traffic level.

Mr. Sherman commented that he is outraged because he feels like he has been treated like a second-class citizen. He explained that in his previous letter he quoted two opinions by Mr. Falconer that he agreed with, but by the end of the process, they had gotten completely turned around.

Mr. Falconer commented that he thought the conditions of the permit set by the Commission were fair and balanced. Unfortunately, Mr. Lasky did not agree and filed an appeal. Mr. Falconer explained that while the case is in the courts, the options are limited. The Commission is trying to reach a consensual agreement with Mr. Lasky, which could not be discussed because it is in litigation.

Mr. Sherman explained that he wrote his letter to express his anger with the Commission's interpretation of the Home Enterprise Regulation. He noted that Mr. Lasky's original application included close to 40 trucks, trailers and pieces of equipment and he questioned how that could possibly fit into a home enterprise. Mr. Falconer explained that the Commission did not approve the original application. Mr. Sherman suggested that Mr. Lasky is violating the restrictions that were placed on parking and storage including parking along Mr. Sherman's property line.

Mr. Sherman suggested that a business of this size does not belong in a residential area and should be moved to a commercial zone. Unfortunately, there is not a commercial zone available to Mr. Lasky in Roxbury. Mr. Sherman noted that he had sent a letter to Mr. Munson expressing his view that the town needs additional commercial zones for people like Mr. Lasky. He indicated that he planned to attend the upcoming (POCD) public hearing to voice his opinion on this issue.

Mr. Sherman asked if Commissioners had visited the Lasky site after working hours to understand that Mr. Lasky's vehicles/equipment could not fit into the 500 sq. ft. Mr. Falconer noted that the 500 sq. ft is the maximum allowed by the permit and what would not fit into that area would have to be moved off site. Mr. Coburn added that any enforcement would have to wait until after the litigation is resolved.

Mr. Sherman explained that when his property was recently surveyed, it was discovered that a portion of his property is in the middle of Mr. Lasky's driveway. If he enforces that encroachment, Mr. Lasky would not have access to his property and there is no way he would be able to back a 20-ton trailer, and tri-axle down the driveway without going onto Mr. Sherman's property. However, Mr. Sherman feels it would be unfair not to allow Mr. Lasky access to his property.

Mr. Falconer reiterated that what is stated in Mr. Sherman's letter is not an accurate representation of the permit that was approved. Mr. Sherman explained that the point he was making in his letter to Mr. Munson was that Mr. Lasky's application far exceeded the bounds of a home enterprise in a residential area.

Mr. Sherman believes that since 2000 while Mr. Lasky was building his business, there had been no enforcement or oversight. He suggested that someone was turning a blind eye. Mr. Sherman commented that he has nothing against Mr. Lasky building a business. He works hard and he deserves it, but a business the size of FSM does not belong in Mr. Sherman's backyard or in any residential area. Mr. Falconer reiterated that a business of that size is not allowed and that is not what was approved.

Mr. Coburn clarified that initially Mr. Lasky was approved for a home enterprise landscaping business. There were no complaints from the neighbors until 2008 when his business had grown past what it should have been. Mr. Lasky's initial application was rejected and the Commission eventually approved a scaled down Home Enterprise, which is now in litigation. Mrs. Urban added that the business would not have transitioned from a small landscape business to an excavation business if Mr. Lasky had correctly applied for his permit.

Mr. Sherman argued that there were complaints made by his neighbors the Birkins and the Town Constable over a period of 8 years, but the previous ZEO did nothing about them. Mr. Sherman explained that he even put up with it until the day his daughter was sick and the trucks were in and out every hour during the day. Mr. Sherman feels he should have appealed, but in retirement he could not afford to do it. Mr. Sherman feels that as a taxpayer he has not been dealt with fairly.

Mr. Sherman noted that he did not want to put Mr. Lasky out of business but did not agree with the Commission's concern that moving a successful business to a Commercial zone would have done that. Mr. Sherman repeated that he did not want this business in his backyard.

Mr. Falconer restated that the permit that was issued was in line with the Zoning Regulations.

Mr. Sherman complained that the triaxle has come in once a week for three weeks in a row. He felt that it wasn't just for servicing and suggested there might be a second triaxle.

Mr. Falconer asked Mr. Sherman if he had spoken to the Zoning Enforcement Official. He replied that he had not and had addressed his letter to the Chairman of the Commission with a copy to the ZEO and Barbara Henry. Mr. Sherman noted that at the last meeting the Commission had asked the ZEO to respond to his (previous) letter. He noted he would have preferred a response from Mr. Falconer.

Mr. Kellerman recalled that Mary Barton had reported that she had spoken to Mr. Lasky about the triaxle and was told that it was on the property for servicing.

Mr. Sherman described the terrain as a steep incline about 230' long. Mrs. Urban reminded that the triaxle went across the road into a neighbor's yard. Mr. Sherman said he had heard about an

illegally parked trailer at the top of the road that got loose and rolled into the neighbor's yard where their kids were playing. When they called to complain, there was no sympathy expressed.

Mr. Falconer expressed concern and suggested that if it weren't for the appeal the situation could be monitored more closely. He asked Mr. Sherman to bear with the Commission until things get resolved either by consent or by the courts.

Mr. Sherman explained that the reason he wrote to Mr. Munson was that he felt that commercial zones should be addressed in the POCD and thought that Mary Barton had been advising about that issue. Mr. Falconer noted that Mary Barton is the ZEO and WEO, but has nothing to do with Planning and only went to a meeting to introduce herself.

Mr. Sherman reiterated that if businesses such as FSM are allowed to exist in Roxbury, they should be in a commercial zone and not in his backyard. He suggested that Mr. Lasky has created a commercial zone of his own for 10 years at 88 Mallory Road by parking and storing 40 pieces of equipment there.

Mr. Sherman noted that the amount of traffic varies and has been moderated by workers picking up trucks on Monday and returning them on Friday.

Mr. Sherman explained that when his surveyor put the boundary pins in the road, Mr. Lasky got very angry and tried to extract them and then put skulls and cross bones on the trees so Mr. Sherman's children have to look at them every day. He noted that he is trying to resolve his issues with Mr. Lasky.

Mr. Coburn commented that the Commission would like nothing better than for this to be resolved. Mr. Falconer thanked Mr. Sherman for coming and Mr. Sherman thanked the commission for listening to him.

#### **Steven Zaleta/Old Lane**

Mr. Falconer distributed several photos that were submitted by Steven Zaleta of Old Lane. He noted that Mary Barton had done an inspection of this property and could not find any violations or ongoing commercial activity. Mr. Falconer felt these photos refute that and he thought a Cease and Desist might be needed. Mr. Zaleta clarified that he took the photos from his property on Old Lane of the Szymanski property on Baker Road approximately two weeks ago (either October 18th or 25th.) Mr. Zaleta was asked to report the exact date to Mrs. Eddy.

Mr. Zaleta claimed the Szymanski's are processing dirt with a machine. He noted that Mr. Szymanski claims he is improving his property but this has been going on for a year. Mr. Zaleta claimed there has been a triaxle on the property every day for a year and feels it should not be stored where everybody could see it.

Mr. Zaleta noted that Mary Barton calls Mr. Szymanski before she does an inspection and suggested that he may be moving everything before she appears. Mr. Zaleta claimed that the photos he presented are a true representation of what has been there every day for the past eight months.

Mr. Zaleta noted that he moved to Roxbury five years ago thinking he was going to a nice town. A plumber lived there at that time. Then Mr. Szymanski bought the property and has gradually added more stuff. Mr. Zaleta noted that in his written complaint filed last May he stated he does not feel this is acceptable in a residential zone. It's not the kind of thing he wants to look at.

Mr. Friedman said the fact that the equipment isn't there for inspections suggests that they are running a business and the equipment is out on call. Mr. Zaleta said their business is incorporated as Moonlight Excavating LLC with headquarters on Baker Road.

Mrs. Urban asked about a sign that was out front. Mr. Zaleta said it belonged to a local mason who was helping Mr. Szymanski build a stone patio. Mr. Zaleta also claimed that there is a building in the setback. Mr. Zaleta repeated that Mr. Szymanski claims he's improving his own property.

Mr. Zaleta noted that Mary Barton went out last week and saw one truck and a pile of dirt. Mr. Zaleta noted that the pile of dirt is 20' high. Mr. Falconer asked if the dirt was trucked in and Mr. Zaleta thought it might have been moved from another part of the yard. Mr. Zaleta said he was not sure if dirt was being removed because the trucks coming in and out are covered. Mr. Falconer reminded that moving dirt on their own property could not be regulated, but there appears to be evidence of ongoing commercial activity.

Mr. Zaleta commented that he would be grateful for anything the Commission could do. Mr. Falconer thanked him for coming to the meeting.

Mr. Weed felt these are very real complaints and Mr. Coburn suggested speaking with the Town Attorney about what might be done. Mr. Friedman asked about enforcement of a cease and desist order. Mr. Kellerman noted the regulations permit stiff fines for ignoring a cease and desist order, but it must go to court.

The Commission discussed various options regarding Mr. Lasky. Mr. Falconer noted that Mary Barton could provide some direction. John Friedman suggested that the Town Attorney be consulted. Mary Barton was asked to contact Chairman Falconer to discuss possible actions.

Mr. Falconer reminded the Commission that they would be reviewing the first 25 pages of the E-Version Regulations, which includes the table of contents, at the December meeting.

Mr. Coburn suggested that Lauren Eddy has done an outstanding job and there should be very few changes.

**MOTION:** To adjourn the meeting at 8:44 p.m.

**MOTION BY:** William Weed, seconded by Gary Coburn and unanimously approved.

Respectfully submitted,

Karen Eddy  
Land Use Administrator

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

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